

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

APPELLANT'S BRIEF AND JOINT APPENDIX

9

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA

—
No. 9974
—

ROSE YEAGER BASSECHES
Appellant

vs.

PERPETUAL BUILDING ASSOCIATION
Appellee
—

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA

United States Court of Appeals —

*For the
District of Columbia Circuit*

FILED NOV 27 1948

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IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA

No. 9974

ROSE YEAGER BASSECHES,

Appellant

v.

PERPETUAL BUILDING ASSOCIATION,

Appellee

*APPEAL FROM A JUDGMENT FOR SPECIFIC PERFORMANCE IN
FAVOR OF APPELLEE GRANTED BY THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF COLUMBIA*

APPELLANT'S BRIEF

Jurisdictional Statement

This is an appeal from a final judgment for specific performance granted by the United States District Court for the District of Columbia in favor of the appellee against the appellant, and the jurisdiction is conferred upon this Court to hear such appeal by Title 17-101 D. C. Code (Supp. VI, 1940).

Statement of the Case

The Perpetual Building Association filed its complaint for specific performance claiming that on September 15,

1945 the appellant, in writing, jointly and severally with Samuel Yeager agreed to "accept an offer", all cash from the appellee of its purchase of the property owned by the appellant and the said Samuel Yeager, (Joint App. 2 to 4). The appellee alleged that it complied with all requirements to perfect its right to compel the appellant and the said Samuel Yeager to "accept said offer", and did "submit formal contracts to the defendants in full compliance with the defendants' commitment" (Joint App. 3). And the appellant and Mr. Yeager refused to proceed. Therefore, the appellee prayed for specific performance.

The answers, in substance, defended on the following grounds: (1) That there was no commitment or agreement (2) that the writing alleged was an offer coming from the appellee, which the appellant had a right to reject, (3) the written memorandum was not an option, (4) there was no consideration to legally bind the appellant under the written memorandum (5) the answer also had the effect of denying the appellee's right to specific performance (Joint App. 5-6).

The other defenses having to do with other matters not appealed from are omitted as having no relevancy to this appeal.

This appeal centers on the construction of Plaintiff's Exhibit C (Joint App. 8-82) whereunder the appellant and Samuel Yeager stated they understood the board of directors of the Perpetual Building Association at its meeting on September 17, 1945 "will consider the question of *offering*" to purchase 506-11th., Street N. W. owned by the appellant, and 508-11th., Street N. W., owned by Samuel Yeager. That Exhibit went on to state that the appellant and Mr. Yeager each individually and jointly agreed to *accept an offer* made by the Perpetual Building Association, provided such offer was made before 4:00 P. M. on

September 24th, 1945, and that settlement was to be made in cash at time of settlement, and that title was warranted to be in fee simple. In addition Mr. Yeager was to be given a two year lease for his property, from date of settlement.

In addition to the above Exhibit it is likewise necessary to consider the effect of Plaintiff's Exhibits D and E (Joint App. 82 and 90) which were two separate unsigned formal sales contracts presented to the appellant and the said Samuel Yeager, and which were rejected by them.

In the pre-trial order (Joint App. 9-10) the issues were narrowed to this: That the appellee sought to compel the appellant, by specific performance, "to *accept an offer* for the sale and purchase of certain real estate" which the appellee contends should be viewed in its entirety as an agreement "to sell and convey". That the position of the appellee in said pre-trial order was, that they did make an offer which had been agreed to be accepted within the time, and thereupon, it became the obligation of the appellant to make conveyance.

In order to advise the Court of the circumstances leading up to the memorandum the president of the appellee testified along these lines. That he knew the appellant and Mr. Yeager for 20 years, and they occupy the property adjoining the appellee's building (Joint App. 13). That the appellant owns the property immediately to the north of the appellee's property (506-11th. Street) and Samuel Yeager owns the property immediately to the North of the appellant's property (508-11th, Street) (Joint App. 14). After some prior dealings concerning the purchase of a right of way by the appellee from the appellant and Mr. Yeager (Joint App. 14-15), a committee was appointed of the appellee to negotiate for purchase of 506-508-11th, Street N. W., to enlarge the existing office (Joint App. 15-16). *This committee was authorized to sign necessary papers for the*

purchase of those properties (Joint App. 15). This committee consisted of Edward C. Baltz, Samuel Scriviner Sr., and Thornton W. Owen.

Mr. Baltz testified he had frequent negotiations, and finally, he advised the appellant he would not take up with the board the appellant's and Mr. Yeager's request for \$250,000.00 unless he had something in writing. He had a letter prepared (Joint App. 18), which he referred to as Plaintiff's Exhibit B (Joint App. 80-81), and because of some apprehension on Mr. Yeager's part as having to vacate immediately and to give Yeager time, Plaintiff's Exhibit C was prepared (Joint App. 81-82) and signed by the appellant and Mr. Yeager. *It should be remembered that this Exhibit C was not signed by the appellee, nor was it then bound thereby.*

After Plaintiff's Exhibit C was signed, the board of directors of the appellee did meet within the time and authorized the purchase in accordance with the letter for the price asked (Joint App. 19). After this, the witness stated he contacted the appellant and Mr. Yeager and told them the price had been accepted and inquired as to how the purchase price was to be divided (Joint App. 20). He advised them that *he would then prepare the contracts* which would be ready in a day or so (Joint App. 21). On the 24th, the appellant for the first time advised him she and Mr. Yeager had changed their minds, and the formal contracts Plaintiff's Exhibits D and E were offered (The Exhibits D and E being Joint App. 82 to 90). (The evidence last stated being (Joint App. 21-22).

On cross-examination Mr Baltz stated he had been with the Perpetual Building Association for 39 years and he had come in contact during that time with numerous contracts for sale of real estate and the forms used in the District of Columbia (Joint App. 23). Although in his

direct testimony Mr. Blatz stated he wanted a writing from the appellant because they had changed their minds many times (Joint App. 17-18) on cross-examination he admitted that since August, 1944 he knew the price to be \$250,000.00 and the price had not changed since that time, but his difficulty was in getting the board to come up to that figure (Joint App. 25). He stated that the board of directors were in the office *almost all the time* (Joint App. 25). (See also Joint App. 35). Mr. Baltz stated he was convinced that if his association was to acquire the property they would have to pay the appellant's price and his job was to sell the board (Joint App. 26). In view of the fact that Mr. Baltz knew that to acquire the property his association would have to offer the appellant's price to the question as to why he did not prepare formal contracts first instead of the letter, the following testimony from the Joint Appendix pages 26 and 27 is quoted:

"Q. Now, Mr. Baltz why didn't you prepare a contract that you knew was to be used on September 15, instead of the letter that he had here?"

"A. Because that would have been premature; we weren't ready for that."

"Q. Isn't it customary, and you know it is customary, when an offer is made, after the offer, for the contract to be signed and then accepted?"

"A. I had to get our board to approve the purchase, and I thought the first thing is to get the purchase approved and the contract approved after that."

"Q. Would it be any difference in getting what was to be the offer of that letter of September 15, would it be any different in using the contracts for the offer to be made?"

"A. I thought had I done that the board would have thought I was premature in getting the contracts signed before they authorized the purchase."

"Q. What do you mean? *When you say the board was going to consider the question of offer to purchase the property, do you mean that was to be taken up with the board to see if they would make an offer?*"

"A. I was going to have the board attempt to offer them \$250,000.00."

"Q. And after the board made the offer and it was accepted by Mr. Yeager and Mrs. Bacceches you would prepare the contracts?"

"A. That would have been the proper time to have the contract signed."

The witness admitted that the appellant's officers prepared the letter of September 15 (Joint App. 28).

In connection with the details of the contract about adjustments, time of settlement, costs of title the witness did not remember whether they were discussed and as to some of the details he admitted were not discussed, and he concluded on page 28 of the Joint Appendix that *"I still say this wasn't a contract at all I was entering into"*.

Mr. Samuel Scriviner, one of the members of the purchasing committee appointed by the board admitted that no money or deposit was ever given to the appellant in that the committee never had any money in its possession (Joint App. 32).

The appellant contended as follows: She stated she often talked over the sale with Mr. Baltz, and Mr. Baltz kept urging her to sell, and if he could get some expression as to the price he could show the board, they would know that the price was \$250,000.00, but she didn't have to sell (Joint App. 38). And when the letter of September 15, was presented Mr. Baltz told her that it was not to be a contract (Joint App. 39). That she didn't prepare the letter, nor did she have anything to do with the choice of the language (Joint App. 39). The appellant stated after she and Mr. Yeager signed the letter Mr. Baltz called her and advised her that the board had decided to make her an offer to which she told him she would have to consult with Mr. Yeager her brother (Joint App. 40). And since it was not a contract she

did not discusse time of settlement or adjustments (Joint App. 41). The witness repeated many times that the letter was not deemed by her as an offer, but information to the board that the price was \$250,000.00 (Joint App. 50 to 54).

Mr. Yeager testified that the letter of September 15, was never mentioned to be a contract (Joint App. 58-59).

The Court expressed its opinion orally (Joint App. 69). and held that from the facts and relationship of the parties that the letter of September 12, 1945 was an offer to sell, and then as an afterthought Mr. Yeager speculated about his business, and there was some discussion as to that. (It must be borne in mind that the letter of September 12 was not signed by the appellant. See Plaintiff's Exhibit B Joint App. 80-81.) That the parties knew what they were doing, and the Court viewed the letter of September 15 as an offer by appellant and it was accepted by the appellee; the Court stated this was supported by the information given Mr. Baltz about the leases, and that Mr. Baltz was also advised about the division of the price, and upon these facts the Court entered the conclusions of law and findings of fact. (Joint App. 72 to 76) and the formal judgment was entered as appears on page 77 of the Joint Appendix.

Statement of Points

1. That the letter of September 15, 1945 was not an offer by the appellant, but an indication of willingness to consider an offer if it came from the appellee.

2. The letter of September 15, 1945 being unsupported by a consideration, could not effectively bind the appellant.

3. That the circumstances surrounding the matter, and the letter itself was not so clear as to form the basis of a claim by the appellee for specific performance, and mutuality is completely absent. The letter also, was not divisible.

Summary of Argument

1. The complaint, the pre-trial stipulation and order, the testimony of the appellee's principal witness, the appellant, and the letter of September 15, 1945 all clearly indicate that this letter was not an offer made by the appellant, but her willingness to accept such an offer if it came from the appellant, and the Court's conclusion that it was the appellant's offer accepted by the appellee was an erroneous conclusion. According to the evidence, the property committee had the authority to execute the contract, and no point would be accomplished if it were intended that the letter of the 15 was the appellant's offer, since the same purpose could have been accomplished by the formal contracts. All of the elements of a real offer are not indicated either by the writing or the evidence. The letter was merely an invitation to negotiate.

If the Court's conclusion was correct, the letter of September 15 signed by the appellant and Mr. Yeager, and not signed by the appellee had the effect of being a binding unilateral option, irrevocable until the time specified. Being merely a willingness on the appellant's part to accept an offer, under the evidence being given only as an indication of what the appellant would be willing to accept, and not an offer, there was no obligation to accept the appellee's offer if made within the time specified, in the light of the presenting later formal contracts.

2. Since no consideration was given to the appellant for the contents of the letter, there was no obligation on her part to hold the same out as a binding willingness to accept the appellee's offer; otherwise, the appellant would be bound, and the appellee would not.

3. Regardless of whether the letter was an offer by the appellant or her willingness to accept the offer from the ap-

pellee since it was ambiguous and not clear, it is incapable of being specifically enforced, and all favorable construction regarding it should have been resolved in favor of the appellant. The Court however resolved the writing most liberally in favor of the appellee and against the appellant. Since the letter was complete in itself to require specific performance of one property and not the other split the contract.

Argument

1. The Court's conclusion that the letter of September 15 was the appellant's offer was clearly unsupported by the pleadings, writings and the evidence. The complaint does not make this claim. Paragraph two of the amended complaint (Joint App. 11) avers that the appellant agreed "to accept an offer"; the pre-trial order designates the action whereby the appellee seeks to compel specific performance by the appellant of "a certain agreement to accept *an offer* for the sale and purchase" (Joint App. 9); the appellant's principal officer and witness, Mr. Baltz by his testimony conceded that at the time of the letter a formal contract was premature and they were not ready for such a contract and by his letter he was going to attempt to get the board to make an offer of \$250,000.00 (Joint App. 26-27). The appellant's averments that the letter was not to be binding nor a contract and she didn't have to sell (Joint App. 38-39) all conclusively leads to the only conclusion that the letter of the 15th, was not an offer by the appellant as the Trial Judge concluded. Throughout the entire case it must always be borne in mind that the letter was drafted by the appellee, and must, by the elementary rules of construction, be construed most strongly against the appellee. The ordinary manner of setting forth an offer is to state that it is an offer, without trying to conceal the fact that the

writing is intended as an offer. What was the purpose of the building association in stating in the letter which they were securing that the appellant was willing to "accept an offer" when it is more easily stated, and if it were the intention to secure such, that the appellant was offering to sell for \$250,000.00? Why should the building association have used the more difficult language that the appellant was willing "to accept an offer" when it was more easily stated that she was making an offer to sell for \$250,000.00? The only reasonable conclusion can be reached was that the letter was not intended, as the appellant claimed, to be a formal offer, but merely an indication to the appellee she was willing to entertain such an offer if made by the appellee. We should not lose sight of the fact that the board of directors of the building association have dealt in these contracts in great numbers, and have clear understanding of their import and are handling them daily. It certainly seems that if the appellant's offer was intended the usual formal sales contracts would have been secured from the appellant, with a provision that they were to be outstanding until September 24, 1945, and if the board was to consider accepting the appellant's offer, they needed merely to sign the contract and return a copy of the same to the appellant. This they did not do. The board must have had something in mind at the time the letter was prepared by them that this was not an offer by the appellant, and her version was correct that it was not to be considered as such, especially where the appellee was so apprehensive over such a long period of time in their desire to acquire the property. If the letter was to be deemed as an offer coming from the appellant, wasn't this their golden opportunity to clinch this much desired and long awaited property which was so necessary for the appellee's purpose. The appellee's officers being so familiar with contracts, and dealing with them in their daily affairs, no other result can be

reached, but that the appellee never intended the letter to be the appellant's offer, nor was this the appellee's position, both by their complaint, amended complaint and claims under the pre-trial order. The trial judge concluding otherwise however, closed his eyes to these considerations.

A second reason which compels the conclusion that the letter is not an offer is that under elementary Hornbook law in order that a contract be formed there must be a concurrence of intention between the promisor and promisee. Here it is not clear who is the promisor and who is the promisee. The appellant stated that she was advised that the letter was not intended as a contract, and the president of the appellee stated that it was not a contract as it was "premature, and they were not ready for that" and on page 28 of Joint App. "I still say this wasn't a contract". A more clear situation that the minds did not meet could be present. An offer, to constitute a contract, must be one which is intended of itself to create legal relations on acceptance. In our case, Mr. Baltz stated that formal contracts were to later be prepared, and the offer in the letter was premature. The letter then did not create any legal relationship, but it was necessary, according to Mr. Baltz, to prepare and sign formal or other contracts. This letter, at best, was only an indication by the appellant of a willingness to deal. No meeting of the minds had been reached as to the time of settlement, as to the amount of the deposit to be put up pending the settlement, or what the rights of the parties would be in case of either of their breach in case a binding contract had been concluded, or what adjustments were to be made, and all of the other formal conditions which was contained in the subsequent formal contract. A clear indication was presented that this letter was only a preliminary negotiation before the parties got down to brass tacks. Such preliminary negotiations never

form the basis of claiming they are offers.¹ The writing also fails to specify when settlement of the sale was to be consummated, or the time of performance of either party. All of this violates the elementary principles concerning offer and acceptance. No clarity or definiteness exists. These important items not included in the letter could be matters or argument between the parties at a later date as they are not covered. There is nothing contained in the letter that it was subject to being reduced later to another formal contract, and standing on its own there are many elements to be considered and which are entirely left open.²

Can it fairly be said that the parties without any mistake or mutual understanding met upon all of the essential points? From the matter above stated we cannot see how this would be so, and before a contract can be made those conditions must exist.³

2. There was no consideration which supported the letter of September 15, 1945 and therefor that fact itself was sufficient to prevent any binding obligation thereunder. Under the Court's ruling, the appellant was bound, but the appellee was not. The oral statement to the appellant that the board had met and agreed to pay \$250,000.00 could not be legally enforced against the appellee, and this point will be discussed further under the doctrine of mutuality affecting the right to specific performance under point three. The appellee never submitted to the appellant any writing formally accepting the so-called appellant's offer, under which, if nothing more were done that the letter of the

¹ Benton v. Christian Ass'n., 170 Mass. 534, 49 N. E. 928.

Anderson v. Public School, 122 Mo. 61, 27 S. W. 610.

Cherokee Tanning Extract Co. v. Western Union Tel. Co., 143 N. C. 376, 55 S. D. 777.

² Wardell v. Williams, 62 Mich. 50, 28 N. W. 796.

³ Cunningham Mfg. Co. v. Rotograph Co., 30 App. D. C. 524, 15 L. R. A. (N. S.) 368

15th would be equally binding upon the appellee. Nowhere in the evidence is it shown that any method was used to secure this to the appellant. No deposit was put up by the appellee, and one witness stated that no money was given to the committee to put up as a deposit. No benefit has accrued to the appellant, nor has there been any detriment to the appellee, and no sum is mentioned in the letter in case the appellee breached its acceptance at a later date what deposit the appellant was given the right to forfeit as usually appears in sales contracts. It resulted in a case where the appellee attempted to bind the appellant without being bound itself.

3. The letter of the 15 is incapable of forming the basis for specific performance of the conveyance of real estate. It has long been held that the granting the equitable remedy of specific performance is a matter of discretion. See Pomeroy's Equity paragraph 35, and 38. In the last mentioned paragraph it is stated:

"The contract must be certain, unambiguous, mutual and upon a valuable consideration; it must be perfectly fair in all its parts free from misapprehension, fraud or mistake, imposition or surprise, not an unconscionable or hard bargain and finally it must be capable of specific execution thru decree of Court."

Paragraph 39 states:

"A purely unilateral promise without acceptance or assent by the other party cannot be enforced at law, and if the agreement is still executory no action upon it may, in general be maintained by either party."

Paragraph 57 states:

"It is fundamental principle that equity will not enforce execution of a contract unless the undertaking to be enforced is founded on a valuable consideration moving from the party in whose behalf the performance is sought. The remedy cannot be obtained for a merely voluntary agreement." Citing *Manning v. American Security and Trust Company*, 269 F. 710;

Smith v. Reynolds, 8 F. 696; Harper v. Davis, 115 Md. 349, 80 At. 1012.

“And if it is doubtful from all the evidence in the case whether a contract was concluded or not, equity will not grant specific performance.” Carr v. Duval, 14 Pet. 77.

When the facts in our case are tested in the light of these principles, it is immediately evident that the appellee's case did not meet these requirements. There was no complete certainty as to the deposit, the time of performance, the adjustments to be made, the rights of the parties in case of nonperformance, and all other detailed items required to properly make a settlement of a property contract. The choice of the language by the appellee, to say the least, would cause, in and of itself, an ambiguity, and when considered along with the statements of Mr. Baltz, the clarity required, the certainty needed for the elements above quoted, is convincing that the letter cannot entitle the appellee to specific performance. In addition, no consideration is present, nor is the appellee bound thereby.

In *Storrow v. Concord Club of Washington*, 63 App. D. C. 190, 70 F. 2d 852 the principle was announced that a contract of sale of land cannot be enforced when the memorandum fails to disclose the vendor's name. A resolution of the directors of a corporation directing the purchase of land authorizing payment of a specified amount was held in this case not to create a binding contract. The Court stated that expression of desire included no obligation on the part of the defendant and was wholly lacking in the element of mutuality.

It has also been held that a bargain which lacked a promise by one of the parties was held to lack mutuality and therefore unenforceable.⁴

⁴ *Town of Laurn v. Ione G. Co.*, 282 F. 432, (8th Circuit).
Coca Cola Co. v. Orange Crush, 296 F. 693, (5th Circuit).

In *Crowell v. Gould*, 68 App. D. C. 297, 96 F. 2nd, 569 it was held that it must be shown, in order to secure specific performance, that the contract must be free from self-contradiction, and there was no basis for a reasonable misunderstanding between the parties as to its purported meaning. In fact there must be such a clarity as to the meaning of the contract, and the pleader's rights thereunder, that the Court can require the specific thing to be done. It cannot substitute a contract of its own making for that of the parties. When so tested under this announcement, how can it be said in the instant case that such clarity exists. Even the appellee's pleading is contrary to the conclusion drawn therefrom and from the evidence by the Trial Judge. The appellee never claimed the letter of the 15th, was the appellant's offer, as determined by the Trial Judge. The complaint of the appellee was to compel the appellant to "accept an offer."

Evans v. Neumann 51 App. D. C. 300, 278 F. 1013 states in order to obtain equitable relief the contract must not only be certain in all its terms but the terms must be clearly proved.

In *Crowley v. Crowley*, 56 App. D. C. 340, 13 F. 2nd, 311 the following statement appears:

"It is elementary that the right to enforce specific performance depends upon the mutuality of obligation. 'A contract to be specifically enforced by the court must be mutual-that is to say such that it might, at the time it was entered into, have been enforced by either party against the other of them. Whenever therefore, whether from personal incapacity to contract, or the nature of the contract, or any other cause, the contract is incapable of being enforced against one party, that party is equally incapable of enforcing it against the other, though its execution in the latter way might in itself be free from the difficulty attending its execution in the former'" Citing *Fry on Specific Performance* (3d Ed. page 440)

“Where a contract, when executed, is not specifically enforceable against one of the parties he cannot, by subsequent performance of those conditions that could not be specifically enforced, put himself in a position to demand specific performance against the other party.”

When viewed in this light, how can it be said that the appellee was ever on record as being bound by the letter of the 15th? It orally advised the appellee that it would purchase, but it never delivered to her any instrument whereby the appellant could legally enforce the letter against the appellee at any time. Exhibits D and E clearly show that they are unsigned.

Another point can be made, regardless of the fact that the letter states the signors, individually and jointly acts, is that by ordering specific performance of the appellant's premises and not of Mr. Yeager's real estate, a new contract was made by splitting the subject matter and requiring the enforcement of a condition (that the appellant take \$100,000.00 and Mr. Yeager take \$150,000.00) which was not contained in the letter.

Altogether, the letter fails to measure up to the standards required by the cases cited to entitle the appellee to specific performance.

Conclusion

We respectfully submit that the judgment of the Trial Judge was wrong and therefore there should be a reversal.

Respectfully submitted,

HERMAN MILLER,
Attorney for Appellant.

JOINT APPENDIX
Case No. 9974

JOINT APPENDIX

Case No. 9974

188

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA

PERPETUAL BUILDING ASSOCIATION, A
Building and Loan Association
organized and existing under the
laws of the District of Columbia
Eleventh and E Streets, Northwest,
Washington, D. C.,

Plaintiff,

vs.

SAMUEL YEAGER, 508 Eleventh Street,
N. W.,

and

ROSE Y. BASSECHES, 4123 Connecticut
Avenue, Northwest, Washington,
D. C.,

Defendants.

Civil Action File
No. 34179

Filed April 8—
1946

Complaint for Specific Performance

1. The real estate concerned herein is located in the City of Washington, District of Columbia.

2. On, to wit, September 15th, 1945, by an agreement in writing, the defendants and each of them jointly and separately agreed with plaintiff that said defendants did on or before four o'clock p. m., September 24th, 1945, accept an offer of \$250,000 all cash from the plaintiff for the purchase by plaintiff of Lots 813 and 814, Square 321,

improved by premises 508 Eleventh Street, Northwest, and 506 Eleventh Street, Northwest, respectively, which said property was then and there and still is owned by defendants.

3. Pursuant to defendants' commitment aforesaid, plaintiff did, on, to wit, September 17, 1945, hold a meeting of its Board of Directors at which said meeting plaintiff's officers were authorized and directed to accept defendants' proposal and to submit to defendants a contract for the purchase of defendants' said property for the sum of \$250,000 all cash and, in accordance with the terms of defendants' commitment.

189 4. Thereafter on, to wit, September 19, 1945, and within the time limit contained in defendants' commitment, plaintiff, acting by and through Edward C. Baltz, its Secretary, communicated to defendants and each of them its agreement to the terms of said defendants' commitment and arranged with defendants for the execution for a formal agreement on September 24th, 1945 in strict compliance with defendants' commitment.

5. Thereafter on, to wit, September 24th, 1945, after having advised defendants of plaintiff's acceptance of their proposal to sell the land and premises herein concerned, plaintiff and defendants met on the premises of plaintiff, and plaintiff thereupon submitted to defendants formal contracts in full compliance with defendants' commitment.

6. Plaintiff avers, however, that, notwithstanding its full compliance with the terms of the agreement and commitment of defendants at a time when no revocation thereof had been communicated to plaintiff, nevertheless the defendants did thereupon, and each of them did fail and refuse to proceed in accordance with the terms of their agreement and that said defendants and each of them still

fails and refuses to proceed in accordance with the terms aforesaid of their agreement.

7. Plaintiff avers that it is ready, willing and able to complete the purchase of the land and premises herein concerned in full compliance with the agreement of the defendants but that it is precluded from so doing by the failure and refusal of the defendants as hereinbefore stated.

Wherefore, the premises considered, plaintiff demands judgment as follows:

1. That a decree for specific performance may be entered herein against the defendants and each of
190 them requiring said defendants to convey unto the plaintiff the land and premises herein concerned upon payment to the defendants of the sum of \$250,000 all cash and such other compliance by plaintiff as may be necessary or requisite by virtue of its agreement with defendants.

2. That plaintiff may be awarded such damages as the Court shall find to have been sustained by plaintiff as a result of the failure and the refusal of the defendants to have herein performed their agreement from September 24th, 1945 to and including the date of hearing of this cause.

3. For such other and further relief as to the Court may seem meet and proper.

WHITEFORD, HART, CARMODY &
WILSON,

By: HARRY L. RYAN, JR.,
815 Fifteenth Street, Northwest,
Washington, 5, D. C.
Attorneys for Plaintiff.

Answer of the Defendants

(Filed Apr. 30, 1946)

The answer of the defendants to the plaintiff's complaint shows:

1. The defendants admit paragraph one of the complaint.

FIRST DEFENSE

2. The defendants deny that the complaint alleges a cause of action. They deny they made any agreement as alleged in paragraph two of the complaint; however, they admit they own the real estate mentioned.

SECOND DEFENSE

3. They deny they made any commitment and have no knowledge of the meeting of the Board of Directors of the Plaintiff. They admit that the officers of the plaintiff submitted an offer to them for the sum alleged, but they rejected said offer, which they had a right to do.

4. They deny on the date alleged there was any commitment outstanding of these defendants. That on the 22nd day of September the defendant Rose Y. Basseches called at the offices of the plaintiff and was advised that the plaintiff would make the offer of \$250,000.00, and she advised the duly authorized officer she would advise the other defendant.

5. She denies that on the 24th, the parties met, but says that on the 25th day of September 1945 she called at the plaintiff's offices and advised the officers of the plaintiff of the defendants' rejection of any offer of the plaintiff.

6. and 7. They deny paragraph six and have no knowledge of paragraph seven, except they admit a refusal of the offer.

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THIRD DEFENSE

8. Further answering the complaint these defendants say that the officers of the plaintiff prior to September 15th, 1945 conferred with the defendant Rose Y. Basseches, attempting to secure from her what price she and the other defendant would sell their property to the plaintiff for. That said officers advised said defendant that what was to be done and said were merely negotiations, and this defendant advised the plaintiff that both defendants would consider an offer of \$250,000.00 from the plaintiff, if said offer were made before September 24th, 1945. These defendants say that simultaneously with submission of the aforesaid consideration of offer, they expressly agreed that by and with the said officers of the plaintiff that such negotiations being made, and the medium by which these defendants advised the plaintiff they would consider such an offer would not be binding upon them and would not obligate them to accept any offer if made, and by reason thereof these defendants are not obligated to accept said offer.

FOURTH DEFENSE

9. These defendants say that they merely advised the plaintiff they would accept an offer, and until the offer was accepted by them, they would not be bound, and the advise given the plaintiff was not an option of any kind upon which the plaintiff could require these defendants to keep outstanding.

FIFTH DEFENSE

10. These defendants say that there was no consideration which made their statement that they would accept an

offer binding, and being without consideration the same conveyed no rights to the plaintiff which they could require the defendants to be bound thereby.

/s/ HERMAN MILLER
Attorney for Defendants.

Copy mailed to Harry L. Ryan, Jr., Esq., Attorney for Plaintiff, Bowen Bldg., by U. S. Mail, postage prepaid this 30th day of April 1946.

HERMAN MILLER,
Attorney for Defendant.

197 **Answer of Defendant Ethel Yeager**

(Filed Sep. 23, 1947)

For a complete answer to the plaintiff's complaint this defendant states:

FIRST DEFENSE

She denies each and every allegation of the defendant except that she is an adult, a resident of the District of Columbia and a citizen of the United States, and that she is the wife of the defendant Samuel Yeager.

SECOND DEFENSE

For a full and complete answer to the plaintiff's complaint she states that she never signed any contract to release her dower in her husband's property; that she was not consulted and did not know of the contents of the offer or that it was originally made, and she was not required or requested to release her said dower, which she hereby

states she refused to release, and still refuses; that she made no representations or promises whatever to release the same and no consideration was offered her therefor.

/s/ HERMAN MILLER,
Attorney for Defendants,
 800 H Street N. W.

198 **Supplement to Defendants' Answer**

(Filed June 6, 1947)

In addition to the matters and facts set forth in the answer of the defendants filed herein, and as additional defense to the plaintiff's complaint, by leave of Court being first duly had, the defendants further say as follows:

That the premises owned by the defendant Samuel Yeager involved herein are owned in his own right, but the same are subject to the dower right of his wife Ethel Yeager. That his wife the said Ethel Yeager did not sign any memorandum nor was she consulted or contacted.

That the defendants are informed that the said Ethel Yeager not being a party to any conferences nor did she sign any papers will not convey her dower rights in the property of her husband Samuel Yeager.

/s/ HERMAN MILLER,
Attorney for Defendants,
 800 H Street N. W.

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Pretrial Proceedings

(Filed Mar. 5, 1947.)

PERPETUAL BLDG. ASSOC.,

Plaintiff,

vs.

YEAGER, *et al.*,*Defendant.*

Civil Action No. 34178.

STATEMENT OF NATURE OF CASE:

This is an action in which the plaintiff seeks to compel specific performance by the defendants of a certain agreement to accept an offer for the sale and purchase of certain real estate which plaintiff contends should be viewed in its entirety as an agreement to sell and convey said real estate for the purchase price agreed to sell and convey in the agreement.

The position of the plaintiff is that they did make said offer which had been agreed to be accepted within the time said agreement provided and that it, thereupon, became the obligation of the defendants to make conveyance upon said terms.

Plaintiff alleged that it has done all things required on its part to be done, and stand ready and willing to pay the purchase price agreed upon, notwithstanding the defendants have refused to make conveyance of said property.

The defendants say: First, that the agreement relied upon by plaintiff is not binding obligation which can be specifically enforced; Two, that the parties agreed at the

time of the making of said agreement relied upon that it should not be considered binding upon; Third, that said agreement is not enforceable in that there was no consideration for the same;

STIPULATIONS: By agreement of counsel for the respective parties, present in Court, it is ordered that the subsequent course of this action shall be governed by the following stipulations unless modified by the Court to prevent manifest injustice:

It is stipulated that a photostat copy of a letter to the secretary of the plaintiff, signed by the defendant, initialed by the Pretrial Court, may be received in evidence without formal proof.

194 As a further defense defendant is not admitting the binding character of the agreement asserts that notification of the offer was not received within the time provided in said agreement and, finally, that the property in its entirety or, in any event, the property owned by defendant Yeager, cannot be conveyed unless subject to the dower right of defendant, Yeager's wife and is not a party to the agreement or these proceedings that therefore said contract cannot be specifically enforced.

Dated Mar. 5, 1947.

JAS. W. MORRIS,
Pretrial Justice.

REMARKS of Pretrial Justice for consideration of Trial Justice:

Attorneys authorized to act:

HARRY L. RYAN, JR.,
Attorney for Plaintiff.

HERMAN MILLER,
Attorney for Defendant.

195 Amended Complaint for Specific Performance, Etc.

(Filed June 23, 1947)

1. The real estate concerned herein is located in the City of Washington, District of Columbia.

2. On, to wit, September 15th, 1945, by an agreement in writing, the defendants, Samuel Yeager and Rose Y. Basseches, for themselves, and defendant, Samuel Yeager, with full knowledge, acquiescence and consent, and as agent of defendant, Ethel Yeager, jointly and separately agreed with plaintiff that said defendants would on or before four o'clock p. m., on the 24th day of September, 1945, accept an offer of \$250,000 all cash from the plaintiff for the purchase by plaintiff of Lots 813 and 814, Square 321, improved by premises 508 Eleventh Street, Northwest, and 506 Eleventh Street, Northwest, respectively, which said property was then and there and still is owned by defendants.

3. Pursuant to defendants' commitment aforesaid, plaintiff did on, to wit, September 17, 1945, hold a
196 meeting of its Board of Directors at which said meeting plaintiff's officers were authorized and directed to accept defendants' proposal and to submit to defendants a contract for the purchase of defendants' said property for the sum of \$250,000 all cash and, in accordance with the terms of defendants' commitment.

4. Thereafter on, to wit, September 19, 1945, and within the time limit contained in defendants' commitment, plaintiff, acting by and through Edward C. Baltz, its Secretary, communicated to defendants and each of them its agreement to the terms of said defendants' commitment and arranged with defendants for the execution of a formal agreement on September 24th, 1945 in strict compliance with defendants' commitment.

5. Thereafter, on, to wit, September 24th, 1945, after having advised defendants of plaintiff's acceptance of their proposal to sell the land and premises herein concerned, plaintiff and defendants met on the premises of plaintiff, and plaintiff thereupon submitted to defendants formal contracts in full compliance with defendants' commitment.

6. Plaintiff avers, however, that, notwithstanding its full compliance with the terms of the agreement and commitment of defendants at a time when no revocation thereof had been communicated to plaintiff, nevertheless the defendants did thereupon, and each of them did fail and refuse to proceed in accordance with the terms of their agreement and that said defendants and each of them still fail and refuse to proceed in accordance with the terms aforesaid of their agreement.

7. Plaintiff avers that it is ready, willing and able to complete the purchase of the land and premises herein concerned in full compliance with the agreement of the defendants but that it is precluded from so doing by the failure and refusal of the defendants as hereinbefore stated.

196A WHEREFORE, the premises considered, plaintiff demands judgment as follows:

1. That a decree for specific performance may be entered herein against the defendants and each of them requiring said defendants to convey unto the plaintiff the land and premises herein concerned upon payment to the defendants of the sum of \$250,000 all cash and such other compliance by plaintiff as may be necessary or requisite by virtue of its agreement with defendants.

2. That plaintiff may be awarded such damages as the Court shall find to have been sustained by plaintiff as a result of the failure and refusal of the defendants to have

herein performed their agreement from September 24th, 1945 to and including the date of hearing of this cause.

3. For such other and further relief as to the Court may seem meet and proper.

WHITEFORD, HART, CARMODY & WILSON,
/S/ By: HARRY L. RYAN, JR.,
815 Fifteenth Street, N. W.,
Washington 5, D. C.,
Attorneys for Plaintiff.

3 **EDWARD C. BALTZ**, was called as a witness for
and in behalf of the plaintiff.

* * *

Direct Examination by Mr. Ryan:

Q. Mr. Baltz, will you state your full name? A. Edward C. Baltz.

Q. What is your occupation? A. President of the Perpetual Building Association.

Q. Now, Mr. Baltz, the Perpetual Building Association owns the building which is located at Eleventh and E Streets, Northwest? A. That is right.

* * *

4 Q. Are you acquainted with the defendants in this case, Samuel Yeager and Rose Yeager Basseches? A. I am.

Q. How long have you known them? A. I should say 20 years, at least.

Q. How did you first become acquainted with them? A. They occupy the adjoining property to ours and have been in those a number of years.

Q. Mrs. Basseches originally occupied the premises known as Lot 814, and I understand that is the building and premises immediately adjacent to the north of your present building? A. That is correct.

Q. And Mr. Yeager, the other defendant, owns Lot 813, the premises immediately adjacent to the north of his sister's, Mrs. Basseches? A. That is right.

Q. Now, Mr. Baltz, did there come a time when you in your capacity as representative of the Perpetual Building Association had any dealings with either Mrs. Basseches or Mr. Yeager seeking the possible purchase of
5 either or both of their properties? A. Yes; on numerous occasions.

Q. Can you tell the Court approximately when your first dealings were? A. As a result or as regards the purchase or the right-of-way.

Q. First as to the purchase. A. They were more or less tied in with each other. There was a right-of-way which we were seeking to get relocated over the rear of our property, and we discussed both the relocating of the right-of-way and our purchase of the property.

Q. Can you fix the approximate date of those conversations? A. It was just prior to 1940, some time in '39, I should say.

Q. At that time you were interested, number one, in the possibility of changing a then existing right-of-way? A. That was the important thing at that time.

Q. And secondly, to acquire their properties? A. That is right.

* * *

6 (Thereupon the document was received in evidence and marked "Plaintiff's Exhibit A.")

The Court: That purports to be a sketch or plat of the area indicated?

Mr. Ryan: That is correct.

Mr. Miller: Which one are you referring to, Mr. Ryan? May I see it.

I take it, Your Honor, for the purpose of the record, this plat identified as Plaintiff's Exhibit A, showing the heavy detail, marks the existing Perpetual Building Association property?

Mr. Ryan: That is correct.

* * *

10 Q. Now, Mr. Baltz, after the \$20,000 was paid to the co-defendants for the right-of-way, to change the right-of-way, when did you next enter into any further negotiations with them, either or both of them, toward the possible purchase of their premises? A. Well, the war came on shortly after, and there was a lapse of three or four years, I should say. I think around the middle of '44 is when we—of course, we reported on negotiations in the sense that during that period they were in the office almost every day, and we would discuss about the purchase of the property, but we came to an agreement about the middle of '44.

Q. Directing your attention, Mr. Baltz, to August 14, 1944, I ask you if on that day your Building Association had a meeting of its board of directors? A. It did.

Q. I show you this book and ask you if you can identify that. A. That is our minute book; yes.

Q. Directing your attention to page 196 of the minute book, is that a true copy of the minutes passed at the meeting of August 14, 1944?

* * *

It reads: "Appointment of committee for purchase of office building site. A committee consisting of Messrs. Baltz, Samuel Scrivener, Sr., and Owen was appointed for the purpose of negotiating for the purchase of proper-

ties 506-508 Eleventh Street, Northwest, said property to be used for the enlarging of the present office space, and having frontage of 45 feet on Eleventh Street. The committee was authorized to sign the necessary papers for the purchase of those properties."

* * *

12 Q. Now, pursuant to that authorization, Mr. Baltz, did you communicate with and enter into any negotiations with either of these co-defendants about the purchase of their properties?

* * *

A. Yes, sir.

Q. Where were the negotiations? Tell the Court?

A. Usually in my office.

Q. Were they frequent or infrequent? A. Rather frequent.

Q. Did there come a time subsequent to having discussed it with these two co-defendants when a report was made by you to the board of the Association? A. It did.

Q. I show you your corporation minute book again and direct your attention to page 213 and ask you if
13 these are copies of the minutes of a meeting held on March 19, 1945? A. They are.

* * *

Mr. Ryan: I would like to read into evidence, your Honor, this entry, this excerpt from the meeting of March 19, 1945:

"Report of office building committee. The committee appointed at the August, 1944, meeting for the purpose of negotiating for the purchase of properties 506 and 508 Eleventh Street, Northwest, for additional ground for the enlargement of the present office building reported that they had had several conferences with the owners of the adjoining proper-

ties and that the owners had stated that \$250,000 was the least they would consider for the purchase of same. After a prolonged discussion, upon motion by Mr. Scrivener, Jr., seconded by Dr. Schafhirt, this committee was instructed to enter into further negotiations with the owners of the properties and authorized to offer an amount not in excess of \$225,000 for these properties, and also granted authority to sign the necessary papers for the purchase thereof."

Does your Honor wish to see it?

The Court: Please.

By Mr. Ryan:

Q. Pursuant to this authorization did you contact the co-defendants upon the proposition of paying them
14 \$225,000 for their property? A. I did.

* * *

Q. Did there come a time, Mr. Baltz, when something further and concrete did come to pass in so far as you or either of the co-defendants were concerned? A. There came a time when something came of it.

Q. When was that, approximately? A. I think it was in the latter part of August, 1945.

Q. What happened at that time? A. Well, I was contacting them on numerous occasions, and they came in the office, and we were discussing it, and finally there came a time when I thought, I said I thought I could get \$250,000 for the property, but I would not take it up with the board unless I had something concrete and definite to offer them.

Q. Why wouldn't you take it up with the board unless you had something definite and concrete to offer them? A. Well, when we had the right-of-way purchase, there was some question after the settlement as to what the conversation was, and I thought in this case we should have something definite and signed by them with regard to taking it

up with the board, and there would be no question after.

15 Q. Had there been cases when prices were quoted previously and then reneged on? A. There had been discussions and the price would go up, and we just could not keep up.

* * *

You needed to have something in writing, provided you would submit the \$250,000 offer to the board? A. That is right.

Q. As the result of that conversation, did you obtain something in writing? A. I had a letter prepared and submitted to them.

* * *

16 (Thereupon the paper writing previously marked "Plaintiff's Exhibit B" was received in evidence as "Plaintiff's Exhibit B.")

By Mr. Ryan:

Q. Now, Mr. Baltz, this letter, Plaintiff's Exhibit B, is dated September 12, 1945, and apparently signed only by the defendant Samuel Yeager. Will you tell the Court what next happened after this letter was signed? A. I think a day or so after it was signed, I don't know whether Mr. Yeager or Mrs. Basseches came to me and said: It meant he would have to get out of his place of business if this contract should go through, which would bad, and would we permit him to occupy the building for two years after the date of settlement.

Well, we hadn't any idea of getting started that particular moment, and I said we would have new contracts made, incorporating a two-years' lease to Mr. Yeager, which was done.

17 Q. I show you this photostatic copy of a letter, dated September 15th, and ask you if this is the

agreement as modified after that request? A. That is the one.

* * *

(Thereupon a document was received in evidence and marked "Plaintiff's Exhibit C.")

Mr. Ryan: In the interest of expediency, this is the same letter, except for the paragraph just above the bottom, about giving the lease back.

The Court: Well, there is another thing that is important. It is signed by Mrs. Basseches.

Mr. Ryan: That is true.

By Mr. Ryan:

Q. Now, Mr. Baltz, as indicated by Plaintiff's Exhibit C, there is a notation to the effect that the board of directors of the Perpetual Building Association are going to consider at its meeting of September 17, 1945, the possibility of a purchase of these two properties.

Did the board of directors meeting on September 17, 1945? A. Yes, sir, they did.

Q. Did they consider the purchase of these properties? A. They authorized the purchase of the property in accordance with the offer for \$250,000, the price that was asked.

* * *

Q. I show you page 225 of your minute book and ask you if this is a true excerpt of the minutes passed by the board on that date, September 17, 1945? A. That is correct.

Mr. Ryan: I would like to read this into the record. Your Honor. This is an excerpt of the minutes:

"Purchase of Eleventh Street property. The committee appointed at the August, 1944, meeting to negotiate for the purchase of the two adjoining pieces of property on Eleventh Street for the purpose of enlarging the present office building read a letter

signed by the owners of those two pieces of property in which they stated they would accept \$250,000 for those properties. Upon motion by Dr. Schafhirt, seconded by Mr. Schrivener, Jr., the proper officers of the Association were authorized and directed to accept this offer and to sign the necessary papers for the purchase of this property at a price of \$250,000. The committee appointed to negotiate for the purchase of the property was discharged."

* * *

By Mr. Ryan:

Q. Upon the discharge of the negotiating committee, Mr. Baltz, was then a new member added to the building committee? A. Well, that was a committee authorized to build a building on the lot, not to acquire the building plot.

Q. To build a building on the property the negotiating committee believed it had acquired? A. That is correct.

Mr. Ryan: I would like to offer this excerpt in the same minutes of September 17, 1945:

"Appointment of additional member to the building committee. The President then appointed Mr. Samuel Scrivener, Jr., as an additional member of the building committee, to serve together with Messrs. Baltz, Owen, Schrivener, Sr., and Scholz."

By Mr. Ryan:

Q. And after these matters took place on September 17, 1945, Mr. Baltz, I will ask you what next took place in so far as your association and these co-defendants were concerned? A. Well, I think the next day or the day after that, I am not sure which, I got in touch with both parties, I think first Mr. Yeager and Mrs. Basseches, and told them that the offer had been accepted, and how they were going to divide the purchase price, how much each was to

get, and I would prepare the contract and have the title examined and the deeds prepared, and they told Mrs.

20 Basseches was going to take \$100,000, for the smaller piece of property, and Mr. Yeager would take \$150,000. So I had the contracts prepared and told them if they could come down the next day or so, they be ready.

I think they came down on the 24th of September. If I remember, Mrs. Basseches came down, and I asked where Mr. Yeager was, and she said she handled all the details, and I said: No, we want Mr. Yeager in there and we want to have him, and we were told for the first time that they had changed their minds, that they didn't want to go through with the contract.

When I asked the reason, they said it wasn't enough money for the property. After they paid income taxes, they would not have as much as they thought they would have left, and they changed their mind, which we refused to submit to. We said they had signed a contract and we considered the thing to be fair, and that ended that.

Q. I show you a paper, dated September blank, 1945, and ask you if this is one of the formal contracts to which you referred? A. Yes, sir, this is.

Q. And this was the contract to be offered to Mr. Yeager?

A. Yes, sir; that is the larger piece.

* * *

21 The Court: This was the proposed executory contract of sale?

Mr. Ryan: Yes.

By Mr. Ryan:

Q. I show you another, dated the blank day of September, 1945. Which one was that? A. This was for the piece owned by Mrs. Basseches.

Mr. Ryan: May this be marked Plaintiff's Exhibit E for identification?

(Thereupon the paper writing was marked "Plaintiff's Exhibit E for identification.")

Mr. Ryan: I offer them in evidence as Plaintiff's Exhibits D and E.

Mr. Miller: No objection.

(Thereupon the documents previously marked Plaintiff's Exhibits D and E, respectively, were received in evidence as "Plaintiff's Exhibits D and E, respectively.")

* * *

By Mr. Ryan:

Q. Now, these contracts, D and E, were prepared by you after conversations with Mrs. Basseches and Mr. Yeager as to the amount each was to receive for the respective property? A. That is true.

Q. And Mrs. Basseches was to receive \$100,000
22 and Mr. Yeager \$150,000? A. That is correct.

Q. And these prices were all cash? A. All cash; yes, sir.

Q. Are you able to fix the date of your meeting with Mr. and Mrs. Basseches at which these contracts were offered to them for signature? A. Well, I am fairly certain it was the 24th of September.

Q. Can you fix the time of day? A. I should say in the afternoon.

Q. Was it before 4 o'clock p. m.? A. Oh, yes; before the office closed.

Q. Your office closes at 4 o'clock? A. That is true.

Q. Who told you at that time, Mr. Baltz, that these people were not going through with the contract? A. They themselves.

Q. What explanation did they give you, if any? A. That it wasn't sufficient purchase money for it. Mr. Yeager also stated he would have to go and buy another building for himself, and he wouldn't be any better off.

Q. Did he give you any other explanation, other than that? A. That they had changed their mind; that
23 was the only reason they gave, outside of buying a new building.

Q. Has your Association been ready, willing, and able at that time and also from that time on to pay the \$250,000 called for in this agreement? A. Yes; that is what we have been hoping for.

Q. Do you tender yourself ready to pay that amount to these parties for these two properties in accordance with the agreement, Plaintiff's Exhibit C? A. Yes, sir, we do.

Mr. Ryan: Your witness.

CROSS EXAMINATION by Mr. Miller:

Q. Mr. Baltz, you have been associated with or connected with the Perpetual Building Association for a long time? A. That is right.

Q. How long? A. Thirty-nine years.

Q. And the Building Association purports to engage in placing first deeds of trust on unimproved and improved real estate in the District? A. That is right.

Q. And then in that capacity you have come in contact with numerous contracts for the sale and purchase of real estate? A. Well, naturally; yes.

24 Q. And you are familiar also with the forms of conveyances in the District of Columbia? A. Well, as much as I am expected to be; yes.

* * *

Q. And you are really the one in charge of operation and did most of the detail work when you were secretary? A. That is right.

* * *

Q. Now, during the time of the 20 years did you attempt to ever buy the property previously?

* * *

A. We discussed it ever since 1930, off and on.

Q. And you were never able to get together on price?

A. We could never agree with the price that they asked; that is true.

Q. Isn't it a fact that during the course of the
25 discussion that you had with Mr. Yeager and Mrs.

Basseches you kept on urging them to give you a price to see if they would not sell it to you? A. No. I think on more than one occasion they came to me.

* * *

Q. From those negotiations you knew Mr. Yeager was married, didn't you? A. Well, the papers signed up were signed by Mr. Yeager. It is in his name.

26 Q. You knew he had a wife? A. No, I didn't.

Q. Didn't you know her? A. I guess I should have known it but the property was in his name.

Q. Didn't you know from your examination of the record title—you knew that there was a Mrs. Yeager? A. I wouldn't know that as a fact; no. To my knowledge, I have never seen her.

Q. Did you ever discuss it with him when he mentioned his wife? A. I don't recall; no.

* * *

27 Q. Did you get a copy of the agreement? A. Yes, sir.

Q. Does her name appear on it? A. Yes, sir.

Q. When you got it back from them, you knew he was married? A. Well, of course.

* * *

28 Q. But when your board met in August, 1944, there was nothing in your minutes, that is, on page 196, to the effect as to how much they would take because there is nothing stated in that? A. No. I mentioned that

without it being part of the minutes, which I think directed it could be acquired.

* * *

Q. But in August, 1944, you did know that the price was \$250,000? A. To the best of my recollection; yes.

Q. This price hadn't changed from August, 1944, until the resolution of March 19, 1945, when you again quoted in the resolution that they were willing to accept \$250,000?

A. The price had been changed. The tax assessment got less on it.

Q. But the price they quoted didn't vary; it was the same price?

* * *

29 Q. Now, in March, '45, you still didn't get any-
30 thing different than what they previously offered?

A. My difficulty was in having the board coming up to such figures. I think it was the first time I had the board come up to \$225,000, and they said it was too much for the property.

Q. And they turned \$225,000 down? A. Yes; Mr. Yeager and Mrs. Basseches.

Q. Now, how did it come about that you were able to discuss the question of \$250,000 with the board? Did you know they were going to take it different after the paper of September 12th was signed? * * * A. Our board members are in the office almost all the time, and we discuss things between meetings, and we can get an indication when the board meeting takes place, before the meeting happens; yes.

Q. Isn't this a fact that occurred: that after you could not get them to take \$225,000 there were a number of discussions and they still insisted on the \$250,000?

The Court: Who is "they"?

Mr. Miller: Mr. Yeager and Mrs. Basseches.

The Witness: Well, I was convinced \$250,000 would be the price if we wanted it, if we wanted to

acquire the property, and my job was to sell to the board to pay what they thought was a very tremendous price.

* * *

31 Q. Then you said to them that you would like for them to put it in writing because up to that point that you were not able to get anything definite because the price was always high? A. I found the individual members expressed themselves that they would be willing to go ahead and pay \$250,000 if they knew we would get the property, but they weren't going to be fooling around.

* * *

32 Q. What reason did you tell them when you wanted to put this in writing—that they had changed from the \$250,000 previous? And that is the reason you wanted them to make the writing of September 12th, that you didn't want them to change their minds, and it was to get an expression from them as to price?

* * *

A. Well, I went before the board, and I wanted to have something definite with me, and that letter was the thing, that I considered the thing to take before them.

Q. Was Mrs. Basseches present at the time that you got the letter of September 12, 1945, signed? A. I really wouldn't know.

* * *

Q. But you didn't get her signature to the first letter?
A. No.

* * *

34 Q. And at the time that occurred, when the letter was signed of September 15, did you tell either one or both that this wasn't a binding contract to sell, merely

something you wanted to show to the board, that this
 35 would not amount to a sale? A. Absolutely not.

Q. You didn't say that? A. No.

Q. Now, Mr. Baltz, why didn't you prepare a contract that you knew was to be used, on September 15, instead of the letter that you had here? A. Because that would have been premature; we weren't ready for that.

Q. Isn't it customary, and you know it is customary, when an offer is made, after the offer, for the contract to be signed and then accepted? A. I had to get our board to approve the purchase, and I thought the first thing is to get the purchase approved and the contract approved after that.

Q. Would it be any different in getting what was to be the offer of that letter of September 15, would it be any different in using the contracts for the offer to be made? A. I thought had I done that the board would have thought I was premature in getting the contracts signed before they authorized the purchase.

Q. What do you mean? When you say the board was going to consider the question of offer to purchase the property, do you mean that was to be taken up with
 36 the board to see if they would make an offer? A. I was going to have the board attempt to offer them the \$250,000.

Q. And after the board had made the offer and it was accepted by Mr. Yeager and Mrs. Basseches, you would prepare the contracts? A. That would have been the proper time to have the contract signed.

Q. And that is the same phraseology you used when you asked Mr. Yeager and Mrs. Basseches to the effect that they would agree to accept an offer made by the Perpetual, and that the offer was coming from the Perpetual, and these were the contracts which they would accept; is that right? A. Well, we were going to accept their offers was what I had in mind. They were going to offer.

Q. Why didn't you use the words: we are making an offer, instead of we are willing to accept an offer? A. I didn't prepare this, but I might have done this.

Q. Didn't you prepare the letter of September 12? A. I had it prepared.

Q. Who did it? A. I think Mr. Scrivener, Jr., prepared it.

Q. Who prepared the letter of September 15? A. The same person.

Q. Now, before the letter of September 12th was signed by Mr. Yeager and before the letter of September 37 15th was signed by both, did you discuss when the settlement would be made? A. You mean when the money would be paid?

Q. When the contract was to be closed. A. I don't know whether I did or not. I thought it would be the customary 30 days. I took that for granted.

Q. Did you discuss it before the contract was signed? A. I don't recall.

Q. Did you discuss with Mr. Yeager and Mrs. Basseches when the adjustment on the taxes and interest should be made? A. That is all a matter of—

Q. (Interposing) Did you discuss it? A. I could not be positive whether I did or not.

Q. Now, did you discuss who was to pay for the examination of title, recording, and the revenue stamps? A. Not to my knowledge, no, I didn't.

Q. Did you have any discussion with them in the event that the title proved to be defective, what result on the contract it would have? A. No.

Q. Did you have any discussion as to who was to assume the risk of this property in case there was a fire until settlement was made? A. I still say this wasn't a contract at all I was entering into.

38 Q. In other words, the contract you were going to enter into are these two things here, which are identified? A. No; that was to come later. I was going to get our board to accept their offer of \$250,000. That was to come later.

Q. If you were going to get the board to accept their offer, why did somebody for your association write that the board was willing to accept an offer, and that Mr. Yeager and Mrs. Basseches would agree to accept the offer of the Building Association, if you indicated this was the offer made by them to the Building Association? A. I had our attorneys prepare that, and I took for granted that is correct, and so at the time I didn't question that.

Q. Now, Mr. Baltz, at the time the letter of September 15th was signed, you didn't say anything about submitting these two contracts, identified as Plaintiff's Exhibits D and E, you didn't tell them you were going to submit these contracts to them? A. The chances are I didn't, no.

Q. You didn't show them to them? A. They weren't prepared at that time.

Q. Now, after the board met and the resolution of September 17th was passed—as a matter of fact, didn't you ask Mr. Yeager to come there the next day and you told
39 him orally that the board had accepted the offer?

A. I think I talked to Mrs. Basseches over the phone and Mr. Yeager orally.

Q. Did he tell you orally then that he was not going through with it? A. No.

Q. Never told you that? A. The first indication was when they both came to the board room.

Q. The first indication you knew when they weren't going through with it is when they came to the board room on the second floor? A. Yes, sir.

Q. And no previous discussion over the telephone? A. I think Mrs. Basseches told us that before Mr. Yeager was present, as a matter of fact.

Q. When they came to the board room, these contracts, Plaintiff's Exhibits D and E, weren't signed by any member of the association? A. The purpose was to have them sign it. That was the purpose of them coming there.

Q. But they didn't sign? A. No, they didn't.

Q. Now, at the time that this letter of September 15, 1945, was presented, why didn't you ask Mr. Yeager
40 to have his wife sign? A. I thought that was sufficient.

* * *

43 **SAMUEL SCRIVENER**, was called as a witness for and in behalf of the plaintiff.

* * *

Direct Examination:

Q. State your full name to the Court, Mr. Scrivener.

A. Samuel Scrivener.

Q. What is your occupation? A. Appraiser for the Building Association.

* * *

Q. Directing your attention to August 14, 1944,
44 Mr. Scrivener, were you at that time made a member of the committee to negotiate for the possible purchase of premises 506 and 508 Eleventh Street, Northwest?

A. I was.

Q. Pursuant to your appointment as a member of that committee, did you participate in any discussions or meetings with the defendants, Mrs. Basseches and Mr. Yeager?

A. I did.

* * *

Q. What was the substance of these conversations, Mr. Scrivener? A. Well, we were endeavoring to purchase this property and Mrs. Basseches wanted to sell it.

45 We tried to get together in the matter of price.

Q. What if any price was discussed at that time?
 A. Mrs. Basseches had a price on the two properties of \$250,000.

* * *

Q. Following those discussions, what took place? A. Well, the time came when the board approved a purchase of the properties at \$250,000.

Q. Now, following that, did you have another meeting with Mrs. Basseches and Mr. Yeager? A. Yes, sir, following that we had a meeting with them.

Q. And when did that meeting take place, if you recall?
 A. I think that was in September of '45.

Q. Was it very near the time of the meeting at which the Board approved the right to purchase at \$250,000? A. It was subsequent to that meeting of the board, of course.

Q. Tell the Court what took place on this meeting
 46 in September after the Board had authorized the purchase? A. Well, we had indicated our willingness to go ahead and buy the property for \$250,000, and then Mr. Yeager and Mrs. Basseches apparently had changed their minds and said they would not go through with the deal.

* * *

CROSS EXAMINATION:

* * *

49 Q. Now, you say you were there on a third occasion? A. Yes, sir.

50 Q. Who was present at that time? A. Mr. Yeager and Mrs. Basseches, and the same committee on behalf of the association, Mr. Baltz, Mr. Owen, and myself.

* * *

Q. Now, what occurred at that time? A. That was the occasion when they said that they would not take even the \$250,000.

* * *

Q. Do you remember whether there were any papers exhibited at that meeting at any time? A. Frankly, my mind is a little bit hazy about the papers because there was so much talk back and forward. We thought we had made the deal and found out we apparently hadn't.

Q. You were on this negotiating committee, were you?
A. Yes, sir.

Q. Do you know whether or not the Building Association ever turned any money over to you as a
51 committee, that is, to you and your committee, to make as a deposit to Mrs. Basseches and Mr. Yeager on account of this property? A. No, the committee never had any money of its own possession. Mr. Baltz on behalf of the association was prepared to pay any deposit which the folks might want.

Q. But to your knowledge none was ever given or accepted? A. The committee never accepted any money as a committee; no, sir.

* * *

RE-DIRECT EXAMINATION:

* * *

Q. Mr. Scrivener, in regard to this committee, are you familiar with the minutes passed or resolutions passed by the board of directors on March 19, 1945, setting up a reserve for the purchase of a new office building? A. I knew we had been accumulating a reserve for that purpose; yes, sir.

* * *

52 **Thornton W. Owen**, was called as a witness for
and on behalf of the plaintiff.

* * *

Direct Examination:

By Mr. Ryan:

Q. State your full name. A. Thornton W. Owen.

* * *

53 Q. Now, on August 14, 1944, were you appointed
to a committee of the Perpetual Building Association
for the purpose of negotiating for the purchase of
premises 506 and 508 Eleventh Street, Northwest? A.
Yes, I was.

* * *

Q. Tell the Court what negotiations you participated
in? A. Well, we had conferences and various meetings
extending over a period of time from 1944, in the middle
of that summer, until the latter part of '45, with Mrs.
Basseches, at which we discussed price, and we had infor-
mation what we thought the property was worth, and we
told her what we would pay, and each time we would make
an offer, she would go up in her price a little, and she
finally got to a quarter of a million dollars and held at that
figure, and we had been to our board of directors several
times with propositions, which we took to her and had
been turned down, and we came back with the same inquiry,
and she said she would not take less than \$250,000, and
finally we had a meeting with her in the board room, and
told her we had been to the board so many times and
54 had the proposition turned down, that we were re-
luctant to go back, and if she would commit herself
and her brother as to what they would take, we would try
to get the board to accept \$250,000.

We had made an offer previously of \$225,000, which they declined, and we said if they wrote a letter stating what they would take, which was a quarter of a million dollars, provided we complied with certain conditions by the 24th of September of that year, and then we went to the board meeting on the 17th, and the board agreed to accept the offer, and we then entered into negotiations to have the contract prepared, and Mr. Baltz, who was a member of the committee, met with one of them, I don't know which, and they indicated how much they were to receive, how the sum was to be divided, and the contracts were prepared, and we met with them on the 24th to sign the contracts, and they said they had changed their minds.

* * *

Q. That was before 4 o'clock p. m. on the 24th? A. Yes, sir.

* * *

Q. Do you recall the reason that was mentioned by either of them for their refusal?

55 A. One reason was they had found out they would have to pay quite a bit of income tax and they didn't see it, and we offered to purchase property for them and trade them for one of equal value, and they might avoid the income tax until such time as they wanted.

Q. Did you meet on the 24th? A. Oh, yes. The committee had been preparing the formal contracts in the usual form prior to that meeting, and on the 17th the board had agreed to go ahead and make the purchase for \$250,000, and then Mr. Baltz had a meeting with one or both of them and they indicated one party got \$150,000 and the other got \$100,000, and we had the contracts drawn on that basis, and they were ready for signature on the 24th.

Q. Was your committee prepared to go ahead at that time to complete the execution of such a formal contract if

that was required? A. We went to the meeting thinking it was just a matter of signing the contract because they indicated on the 19th how they wanted the money divided.

Q. On the 19th they indicated? On the 19th you say there had been communicated to them the fact that the Building Association accepted their offer and was willing to pay \$250,000? A. That is right.

Q. And the first indication that you as a member
56 of the committee had that they declined to go forward was on the 24th when the meeting was held for the final conclusion? A. That is correct.

* * *

66 CROSS EXAMINATION:

By Mr. Miller:

Q. Mr. Owen, you have been a member of this
67 negotiating committee for how long? A. Since about 1944, as I recall.

Q. Now, isn't it a fact that Mrs. Basseches gave you a figure in 1944 of \$250,000 and stayed fast at that figure throughout? A. She did but the figure was so excessive we thought she could not be serious.

Q. And that started years ago and she upped it quite a bit? A. She indicated a willingness to deal, and we offered \$135,000, \$180,000, and \$200,000, thinking we could get on common ground, and she led us to believe there could be.

Q. But she always indicated from August, 1944, that the price was \$250,000? A. I could not recall whether she definitely did in 1944. I know in the summer of '45 that was the only figure she quoted.

* * *

68 Q. Do you know whether there was any discussion among the board as to why it was worded

69 that they were willing to consider your offer made to them, and why it wasn't couched in language that they were making an offer to you? A. Because of the fact we had talked back and forth numerous times with Mrs. Basseches, to get the authority of the board to go from \$135,000 to \$225,000, and each time Mrs. Basseches would have some comment to make, and it got to \$250,000 price, and we felt when we went to \$225,000, we went overboard, and it was only worth \$180,000, and we felt we were in an awkward position of going to the board, and I felt about going to the board, if you offered Mrs. Basseches \$250,000, she immediately wanted \$300,000, and we wanted some indication from them to show to the board. If we made the \$250,000 offer, the board felt they were being pushed around, and they wanted to go through with it.

Q. Then you did that? A. Yes. Mr. Baltz advised Mr. Yeager and Mrs. Basseches and the board of the offer, and then we went ahead and had the contract prepared, and they indicated how they wanted the money divided, one wanted \$100,000 and the other \$150,000.

Q. Of course, there wasn't any writing by the committee given Mrs. Basseches and Mr. Yeager at the time they signed the letter of September 15th indicating that you would take that offer? A. We indicated only verbally

70 ally we were going to the board to try to get them to accept it at the following meeting.

* * *

72 **Rose Y. Basseches**, one of the defendants herein, was called as a witness for and in her own behalf, and being then and there duly sworn by the Clerk of the Court, assumed the witness stand and, upon examination, testified as follows:

73 Direct Examination:

By Mr. Miller:

Q. Mrs. Basseches, what is your full name? A. Rose Yeager Basseches.

Q. Where do you live? A. 4123 Connecticut Avenue.

Q. Are you in business? A. No, I am a housewife.

Q. You are the owner of this property at 506 Eleventh Street, Northwest? A. Yes, sir.

* * *

75 Q. Getting down, Mrs. Basseches, to the question of the acquisition of your property, when did you first talk about either the sale of it or the purchase of it by the Perpetual Building Association?

* * *

A. I could not tell you exactly when, but whenever I would go into the Building Association, it seems like Mr. Baltz had time and he would always approach me and say: Well, we would like to get hold of the two properties, and he said: We would like to buy it, and I said: To tell you the truth, Mr. Baltz, it is not for sale.

He said: Well, we could use it; we would like to enlarge on our place, and I said: Well, if we ever sell,
76 we have always been friendly neighbors, and you would be the only one to sell it to, but as far as selling it, we have no idea of selling it. It was always friendly.

* * *

Q. Did Mr. Baltz tell you about the resolution being passed to acquire your property and your brother's property? A. I don't remember.

* * *

77 A. Well, no, he never said that amount. He said they always thought we wanted too much money.

Q. Did he ever mention a figure of \$225,000? A. No, he never mentioned a figure.

Q. Did he ever show you any copies of any resolutions of the board of directors? A. Never.

* * *

Q. Was your brother ever present on the preliminary conversation? A. No.

* * *

79 Q. Mrs. Basseches, did you know about the letter of September 12, 1945, which your brother signed? A. No.

Q. Can you tell us what you personally know and what the discussion was that led up to the letter of September 15th?

* * *

A. Well, a number of times Mr. Baltz said: We would like to get these properties and all that, but it seems like I can't do anything with the board. If I had a piece of paper to show that board that you really would not take less than that, and of course, they would not give you that, but I would like to show them a piece of paper, and then I feel they know what I am talking about, but now, he said: you don't have to sell; you don't have to sell.

80 He repeatedly said that to me. He said: You don't have to sell. It is just I want to show them a piece of paper and see an amount of money in case you would decide to sell, but he finally impressed me,

he said: You don't have to sell, and I said: Mr. Baltz, I have known you for years, and I have explicit faith in you, and you know how I feel towards you, and you have been around the neighborhood for years, and he said: Yes, but I want to show the board something because they think that is so much money, and he continued and said to me, he said: Remember it is so much money and I want a piece of paper, and he said: You don't have to sell, and he immediately says: Now, that is not a contract, and he used those very words, he says: That is not a contract.

Q. And after that did he present that paper to you?

A. That was a final conversation, and afterwards he told me: Now, the board is going to have a meeting, and I would like to have that piece of paper to show them, and then I was in the Building Association and he had somebody type that up.

Q. Did you type it up? A. No, I didn't.

Q. Did you give him the language? A. I don't know who typed it.

Q. Did you give him the language to be used in the paper? A. No. He went to the corner somewhere
81 and somebody typed it and he brought it back.

Q. Was your brother's signature on the paper of September 15th at the time you saw it? A. No.

* * *

Q. When you were presented the paper on September 15th, what was done? A. I looked at it and I noticed they had, I think it was Basseches, spelled wrong, and I told them it was and spelled it correctly, and we went into my brother, and we can talk, and he said: Well, if we do sell, you know how it is, in case we do sell, he said, and after we decide that we sell and we sign up, I still have to have two years to look around to see if I can get located.

* * *

Q. At the time you signed it and took it in, was it agreed with Mr. Baltz that this was to act as a contract?

A. No.

82 Q. Did he give you any money at the time you signed it? A. No, he didn't give me any.

Q. Did he ever send you any paper telling you that they would accept it before the 24th of September? A. No.

Q. Did your brother come into the Building Association when you handed him the paper on September 15th? A. No.

* * *

83 Q. What was the next thing you heard about it?

A. Well, then afterwards they were supposed to have the board meeting, and they had the board meeting, and then after they had the meeting I got a telephone call, from Mr. Baltz, and he said: Now, well, the board had a meeting and they decided to make you an offer, and I said: So?

He said to me: I want you to come down and I will get the contract ready.

So I said to him: Mr. Baltz, I will have to go down and talk to my brother.

* * *

Q. At the time you discussed this paper writing of September 15th and signed it, did you discuss with Mr. Baltz or anybody of the Building Association that your part of it would be \$100,000 and your brother's part \$150,000? A. No, not then. You knew, when we had off the record talk and all that, Mr. Baltz said to me: Well, how are you going to do this, something like that, and I said: Well, if we would sell for \$250,000, I said, my brother would get \$150,000 and I would get \$100,000, and that is where he got that idea.

* * *

84 Q. Did you discuss when settlement would be made and adjustments made? A. No, because it wasn't a sale. It was no contract. I didn't discuss that.

He said he wanted that piece of paper to show it to the board. He was positive that the board would not even make that offer, he said, because all the time they thought it was too much.

Then when we had the meeting with Mr. Owen, he made me feel like it was such a price they would not even consider it.

Q. Well, now, after you had the telephone conversation, after the meeting of the board of directors, what did you do next? A. I just didn't bother because we had changed our mind before.

* * *

85 Q. Will you tell us how many days it was, as best you can, after the telephone conversation? Was it the day that you said you would let him know? A. It was about a week later, I have an idea.

Q. Did you discuss it in the meantime with your brother? A. Yes, I seen him then but we had made up our minds; we had changed our minds before.

Q. This wasn't the first time you changed your mind? A. No; we just changed our mind.

Q. When you got to the Building Association to make this payment, what occurred? A. I think Mr. Baltz was in the office, and he, if he has time, he would say hello, and he just happened to have time, and he talked to me and he said: What happened? We really thought this was
86 going to be a deal and we would be able to get together with you, and so on and so forth, and I said: No, Mr. Baltz, we changed our mind, something like that, and that is all, and I just walked off.

Q. Did you later meet them in the board room? A. Afterwards he said: Well, I will tell you, I don't know if it was that day or when I walked in again, and he said:

I would like you to meet with the board and talk to them because that is what I told them, and he said: You know how I feel. I would like to have to hear you tell them the same thing, and that is when I walked in afterwards, and I can't recall just which meeting we had.

* * *

Q. Then you did go up, did you go with your brother?
A. No, I didn't go with my brother, but afterwards he said: Well, he said, could you call your brother, and I said: I will tell you: He is busy, you know how it is, but I will tell you what: I know he will come in. I said: He may not be dressed or something, and so Mr. Baltz picked up the telephone and called him, and he said: All right, he will come in, and that is when he went with me.

* * *

87 Q. Didn't you go up first and you went to the board room? A. Yes, sir.

Q. Who was there when you got there? A. I think Mr. Scrivener and I think Mr. Dyer was there, and I don't recall whether Mr. Owen was there.

Q. Did your brother go up at the same time or afterwards? A. Yes, to the board meeting because we waited downstairs near Mr. Baltz' desk.

Q. What discussion did you have in the board room, to your best recollection? A. Well, they wanted to know why we changed our mind, and why this and that, and Mr. Owen got up and said: You are getting a lot of money, you are getting a lot of money, you know what I mean, and he said my brother and I would change our mind, and you know what I mean.

Q. Did they submit to you contracts which have been introduced in evidence as Plaintiff's Exhibits lettered D and E, which I will show you? A. No, they never showed me any paper; no.

Q. Those? A. No, I never; no, sir.

88 Q. Were you asked to sign your name? A. No, I wasn't.

* * *

89 Q. At the time that this paper writing was made on September 15th, was there any discussion between you and Mr. Baltz as to what was going to be done about the lease that then existed on your property?

90 A. Well, he said he wasn't ready to build, and he said—he didn't say anything about it. He knew I had a lease.

Q. Was there any agreement between you and him as to what would happen to the lease on your property? A. No.

* * *

Q. At the time you signed the paper on September 15, 1945, did you have a lease on the property? A. Yes, sir.

Q. How long was that lease to go? A. It was to go until March, 1949.

* * *

91 CROSS EXAMINATION:

By Mr. Ryan:

Q. You say this lease which expired in '49 was discussed with Mr. Baltz? A. Yes, he knew I had it, you see.

Q. Was it discussed with him, Mrs. Basseches? A. I don't know what we discussed, or what time.

Q. At the time you entered into the agreement of September 15th? A. No, there was no discussion.

Q. No discussion then of the lease which expired March, '49? A. No.

The Court: That is not material from my point of view because if she signed an agreement to sell for \$250,000, and if it should be a valid contract,

that, of course, assumes she signed with respect to knowledge of the building.

* * *

93 Q. Did you and your brother on any previous occasion make an offer in writing to the Building Association to sell the two properties? A. No writing; I never gave anything in writing; no.

Q. Did you and your brother ever discuss between yourselves, prior to '45, the sale to the Perpetual Building Association? A. We discussed a lot of things together, not to sell to the Perpetual Building Association.

Q. You never before did? A. We thought of it.

Q. Did you discuss it, Mrs. Basseches? A. Yes, I may have discussed it with my brother.

Q. And he discussed it with you? A. Yes; that we might eventually sell if they wanted it.

Q. You knew they wanted it? A. Sure we knew. Mr. Baltz told me and talked to me all the time.

* * *

96 Q. Now, when was the first time to your knowledge that the price of \$250,000 was discussed for the two properties? A. When we had the board meeting, when Mr. Baltz, and let us see, I think it was Mr. Scrivener was there, and I am trying to think if Mr. Owen was there. I don't remember exactly, but Mr. Baltz happened to put it on a piece of paper what he thought was the price they should pay, and then afterwards he showed us and
97 he thought \$250,000 would be the price that they ought to pay.

Q. And that was the first time that a price of \$250,000 was discussed for these two properties, to your knowledge? A. Yes, sir.

Q. When was that board meeting in reference to September 15th? A. Oh, I don't know exactly.

Q. Was it before or after? A. It was before.

Q. Would you say it was a month or two before? A. It was maybe a month or so.

Q. You were present at that board meeting? A. At the board meeting where it was, when they talked about—that was when they talked whether I would be interested to sell? Is that what you mean?

Q. Yes. A. Yes.

Q. That was about a month before September 15th? A. Yes, sir.

* * *

99 Q. Well, now, coming to September 15th, that
was the day upon which this Plaintiff's Exhibit C,
100 that is the letter that has been discussed, was signed
by you?

* * *

Q. Did you have any preliminary discussion with anyone on that day about signing this paper? A. No.

* * *

101 Q. Did anyone else, other than Mr. Baltz and you,
participate in the discussion when you came over
to his desk? A. No.

Q. When you came to his desk, what took place in so far as this paper, Plaintiff's Exhibit C is concerned? A. Well, he went over some place, I didn't see where, and he got that letter typed, and after he got it typed then he asked me to sign it, and he said, your brother will have to sign it, and I said I will take the paper in and I will get my brother to sign.

Q. You said you will take this paper in and get your brother to sign it? A. Yes.

* * *

103 Q. You signed it in front of Mr. Baltz? A. Yes.

Q. And then Mr. Baltz asked you to do what? A. He said, well now, we want to get your brother to sign it,

and I took the letter and went to my brother's store, and that is when he signed it.

Q. Well, now, at that time didn't you know that your brother had signed a letter already similar to this? A. I did not.

Q. When did you first learn your brother had already signed it? A. I didn't know it until I saw it at your office.

* * *

Q. Now, Mrs. Basseches, I show you a paper
104 marked Defendants' Exhibit No. 1 for identification, and ask you if you have ever seen that paper before.

A. Yes, that is my writing.

Q. That is your writing. A. Yes, sir.

Q. When was that prepared? A. Well, that is when I think he decided, when I went in for him to sign, he thought, well, now, he said: In case we do sell, he said, I feel I ought to have some two years to look around.

By Mr. Wilson:

Q. Who said this? Your brother? A. Yes, sir. That it what I wrote out.

By Mr. Ryan:

Q. That is your handwriting? A. That is my writing; yes, sir.

Q. Well, now, Mrs. Basseches, isn't it a fact that this was already in the letter, Plaintiff's Exhibit C, when you saw it and had your brother to sign? A. Well, they typed one letter, and then they typed another letter. This is the second letter they typed.

Now, I don't remember if the mistake was they didn't get my name right, or what it was, but I know that second letter was typed, and that is the second letter that was typed in the Building Association.

105 Q. Did you see the first letter that was typed?

A. Yes, but I say, I can't recall. I know there was a reason for the second letter that was typed.

Q. Now, Mrs. Basseches, when and where was Defendants' No. 1 for identification written by you? A. Yes, sir.

Q. This memo. Where? A. Well, that I think was in my brother's store.

Q. After you had taken the letter up to him to be signed? A. Well, before we signed that September 15th letter.

Q. Before you signed the September 15th letter? A. Yes, sir.

Q. Well, did you sign two September 15th letters? A. That I don't recall. I don't remember if it was the name wasn't right, or something. I know there was a typing of two letters. I don't recall that.

Q. Well, now, Mrs. Basseches, I show you again Plaintiff's Exhibit C and is this not the letter you have just testified that you signed by Mr. Baltz' desk before you took it up to your brother? A. Well, that is the only one I signed, that we signed together. I signed it and he signed it.

Q. You signed this letter and took it to your brother, and then after you got to your brother, you prepared this Defendants' No. 1 for identification? A. I told you I don't recall exactly.

* * *

107 Q. That is the first time you had seen the letter of September 12th? A. Yes.

Q. And he didn't tell you when you came up on September 15th and wanted him to sign the letter to the Perpetual that he had already signed a letter for \$250,000? A. No.

Q. Never told you that? A. No.

Q. Did he sign any September 15th letter at that time in your presence? A. Sure just signed it when I took it up. I was sitting there while he was signing it.

Q. But you had signed it before you took it up? A. That is right.

Q. And then he signed it in your presence at his place of business? A. Yes.

Q. What did you do with it then? A. Then I took it back to the Building Association.

Q. When did this information, Defendants' Exhibit No. 1, get incorporated in that letter? A. That is when that letter, that 15th letter was typed. That is when. I gave that to them to put in.

Q. How many trips did you make to your brother's office that day before these letters were completed? A. I don't recall that.

Q. Did you take one letter up that you had signed, and then he said this does not protect me on the lease, and then you came back? A. I think it was, but I can't recall it. I will tell you: We dickered so much with the Perpetual Building Association that every time we came in there was talk about it, and I thought it wasn't a sale, and we didn't make notes of everything.

Q. So you don't remember how many letters you signed then, is that your testimony? A. No, I didn't sign any letters. The only thing I signed was that letter, and then I took it back to my brother to sign, and that is the only letter I have signed. I am very careful what I sign. I don't sign anything like this.

Q. You signed this letter? A. That is the only one. That does have my signature.

Q. This Plaintiff's Exhibit C, you signed that at Mr. Baltz' desk and then took it to your brother? A. Yes.

By the Court:

• • •

109 Q. You said you are very careful what you sign. Then I might assume from that that you read carefully the letter that you did sign? A. No; I said about signing.

Q. You did sign the letter of September 15th? A. Yes, sir.

Q. You testified also as a matter of practice and routine you are careful of what you do sign? A. Yes, sir.

Q. So am I to draw from that the inference that you read carefully the letter of September 15th? A. No, I didn't, but I would not sign it if it was—I said—

Q. (Interposing) Either you did or you did not. A. I signed the letter.

Q. My question is: Did you read carefully the letter of September 15th? A. I don't know that I read it any too carefully because—

Q. (Interposing) I am only asking that question as the result of your testimony that you are
110 careful of what you sign.

I want to know whether it was a departure from your usual practice when you signed the letter of September 15th? A. I don't understand the question, your Honor.

Q. You testified, and I am not trying to confuse you, but I want the truth of the situation. You testified you are very careful as a rule in what you sign. Isn't that right? A. Yes, sir.

Q. But you did sign the letter of September 15th; is that correct? A. Yes, sir.

• • •

111 Q. What part of the letter of September 15th came to you as any surprise later, Mrs. Basseches?

• • •

A. Well, that I don't understand.

Well, afterwards when they said that was a sale, I didn't think that was supposed to be a sale. It was just a letter that Mr. Baltz told me he wanted to show the board.

Q. What did he want to show the board? A. He wanted to show the board, the board told him, he said, the board always told him everything was too much money, and he wanted to show the board that they could not buy the property for the amount that they thought they could. He kept on saying all the time: You know you don't have to sell; it is just I want to have something to show to the board.

Q. Why do you think this letter was shown to the board? A. To show the board if they wanted to buy it they could not buy it for less than it was.

Q. For \$250,000? A. Yes, but I didn't feel it was to show the board we were ready to sell.

Q. What division of the \$250,000 was to be made
112 if the board agreed to purchase? A. Well, naturally, my brother had more ground and I felt that he was entitled to more money than I was.

Q. What part of this was he to get and what part were you to get? A. He was to get \$150,000 and I was to get \$100,000. We thought he would get more for the same reason that he had more ground.

Q. Did you discuss it with your brother at any time, that he was to get \$150,000 and you \$100,000? A. We possibly did. Whenever I go down in the Building Association, I always go to see my brother.

Q. You had understood that your brother, Mr. Yeager, would get \$150,000 and you would get \$100,000? A. We figured he was entitled to more than I was. I figured he had more ground and that he ought to get more than I did.

Q. And that was the basis? A. Yes, sir.

Q. Did you ever convey that information of the division of \$150,000 for your brother and \$100,000 for you to Mr. Baltz or anybody connected with the association? A. Mr. Baltz and I would have talk, and he would say something

about money, and I said: After all, my brother's property has more ground, so naturally, he is going to get more, and that is how the idea came up.

113 Q. I ask you if you ever told Mr. Baltz about that division? A. Yes.

Q. When did you first have knowledge, Mrs. Basseches, that the meeting on September 17, 1945, which is referred to in the letter, had been held by the board of directors and that the board of directors had authorized Mr. Baltz to accept your offer? A. Well, I think it was a couple of days later when Mr. Baltz phoned me, and he said: Well, we had a meeting of the board and I think they will make you an offer of \$250,000, and he said: Come down and see me, and I said: I will take it up with my brother and I will come down and talk to you, and that is all I said to him.

Q. You didn't tell him at that time that you had changed your mind, did you? A. No.

Q. At that you hadn't changed your mind? A. I had changed. We had changed our mind before.

Q. You did? A. That is why I told him I would come to see him and talk to him and talk to him again.

Q. When did you change your mind? A. We had changed before they had the board meeting.

* * *

115 Q. Did you change your mind to make a sale to Perpetual? A. Yes, we changed our mind. That is why we changed it to make the sale. After all, my brother and I were together for years and it was for my interest to be together with him.

Q. Your mind on the 15th as indicated in this letter, you and your brother indicated you would sell and would take \$250,000? A. No.

Q. Wasn't that your mind on September 15th? A. Not to sell; just as a letter.

Q. What then did you change your mind about? A. We changed our mind. We thought it was best not to sell. That was why we changed our mind.

Q. This was a letter to sell? A. It was a letter that Mr. Baltz said he wanted to show to the board, that they could not get it for less than that amount of money. That was probably—we talked together and he wanted to show the board because whenever the board had a meeting they would always think we wanted too much money, and possibly Mr. Baltz said that he thought that is how much it is worth, or how much he thought they should pay.

116 Q. And on September 15th you told him definitely that you and your brother would take \$250,000? •

A. I told him what I said.

Mr. Miller: The letter speaks for itself.

• • •

118 Q. Who was the first one to change his or her mind in connection with the \$250,000 price? A. My brother changed his mind, and when he changed, I changed my mind.

Q. You changed yours because he changed his? A. Because we always said we were working together; yes, sir.

• • •

Q. Mrs. Basseches, when Mr. Baltz contacted you on or about the 19th of September and told you that the
119 board had authorized payment of \$250,000, you didn't on that occasion tell him that you and your brother had changed your mind? A. I said: I will come down. I said: Mr. Baltz, I will go down and see my brother and I will let you know. That is all the words I used.

• • •

Q. Did you ever contact Mr. Baltz, and tell him that you had changed your mind? A. Yes, I was in the Build-

ing Association, and he saw me, and he said: What is the matter? You are changing your mind?

I said: We just changed our mind, and that is the time when he asked me to meet with the board. He says: I would appreciate it if you would meet with the board, and you can talk to them so they will know what is what.

* * *

120 Q. So that is the first time that either you or your brother had told Mr. Baltz that you changed your mind?

* * *

By the Court:

121 Q. When was this? Fix the time, please? A. After the board meeting.

Q. Well, the board meeting was September 17th? A. Well that was about, I think, about a week later.

* * *

By the Court:

Q. You heard Mr. Baltz' testimony that the reason you changed your mind is that you were losing money on the deal? A. That is right.

Q. Did you tell him you would lose money on the deal? A. We thought it wasn't, that wasn't a sale. Whenever we talked off the record, I said: Now, Mr. Baltz, you know you have known us many years, and we like you as a father, and that time he knew what I was talking about. So we talked differently, you know, when you know a person real well and you have confidence in them, and you know he is not going to tell you something to do that
122 you feel he is going to hurt you.

Q. Do you think Mr. Baltz took advantage of you? Is that your feeling? A. I don't think he would.

Q. Do you think he did? A. Well, he ought to know.

He told me it wasn't a sale and that is why I didn't think so. Mr. Baltz in his heart knows it wasn't a sale.

Q. Well, my question was: Do you think now that Mr. Baltz took advantage of you? A. I don't think he would do it intentionally; no.

Q. But you think he did? A. That would not be fair to say that.

Q. But I say: You don't think he did it intentionally. In any event, he did it but he did not mean to do it? A. No, I don't think he would do it intentionally.

Q. But do you think he did it? A. Well, if he is trying to say it is a sale, he would be. Now, he finally told me it wasn't a sale. He told me: Now, don't feel that is a sale; you don't have to sell. He would always tell me: You don't have to sell but I just want to show it to the board.

By Mr. Ryan:

Q. On the occasion of this meeting had in the board room of the Perpetual, were any additional papers
123 shown you and Mr. Yeager with the request that you execute and sign them? A. Nothing. I never saw any papers.

Q. Now, Mrs. Basseches, I want to direct your attention to Plaintiff's Exhibit E and ask you if you know where Mr. Baltz got the information to incorporate in that exhibit, the fact that the property was to be sold subject to a tenancy expiring March 15, 1949? A. Well, when he would converse with me about buying the property, you know, about getting the property to build a building, he would say then and he asked me, and I felt that I knew him real well, and I told him I have a lease, and he knew that I had a lease, and I told him about the lease.

Q. And told him when it expired? A. Yes.

Q. And are you also the one that gave him the information to insert in this exhibit that the price to you for

the property was to be \$100,000? A. Yes, I think we talked about it.

Q. I asked you: If you are the one that gave him that information? A. Yes, I did.

* * *

125 RE-DIRECT EXAMINATION:

By Mr. Miller:

* * *

127 Q. Was there any discussion, Mrs. Basseches, as to how much of a deposit would be put down at the time? A. They didn't mention any, anything like that, because, as I say, it wasn't a contract for sale. Mr. Baltz definitely told me it was something he wanted to show the board.

Q. Did they discuss with you who would hold any deposit that might be put up? A. No, they didn't.

Q. Was there any discussion with you as to why, as long as you were going to convey the property in fee simple, why this had been done, if it was subject to the lease which was expiring in 1949? Was there any discussion about it? A. No.

* * *

128 Samuel Yeager, one of the defendants herein, was called as a witness for and in his own behalf,

* * *

Direct Examination:

By Mr. Miller:

Q. What is your full name? A. Samuel Yeager.

Q. Where do you live? A. 3301 Military Road, Northwest.

Q. And are you married? A. Yes, sir.

Q. When did you marry the present Mrs. Yeager? A. 1931.

* * *

136 Q. Mr. Yeager, have you had any discussion with Mr. Baltz, Mr. Scrivener, or anybody, prior to August, 1944, tending to go to the question of the sale of your property to them? A. The only conversation I ever had made about my property was with Mr. Baltz only.

Q. When did they start? A. Years ago. I could not say. Maybe fifteen years ago, whatever conversation we had on the property.

Q. Well, prior to 1944, how many times would you say the subject was mentioned between you? A. Before '44?

Q. Yes. A. Well, maybe 50 different conversations.

Q. What? A. Maybe 50 on the property.

Q. Were you ever able to get together and establish a price that might be agreeable to you and agreeable to him?

A. No, we never got to any particular price before '44.

136 Q. Do you know anything about a resolution of the board of directors that was passed by the Building Association?

* * *

137 A. Not that I know of.

Q. Did you have any conversation with Mr. Baltz in August, '44, relative to the sale of the property? A. I did.

* * *

139 Q. Getting to August, 1945, tell the Court all the circumstances that led up to the signing of this paper, that you did sign on September 12th and September 15, 1945. A. Well, at different times, I would go into the Perpetual, to get change every day, and I saw Mr. Baltz there, and we talked, and he says: We would like to

buy your property because we want to make a larger building, and I said: That is very good.

He said: We are dickering with other pieces of property, but if we can buy yours, we will stay where we are, and I asked him where was the property, and he said they were interested in buying the Moses Building, and he took me back to his desk there and he showed me plans that they had for the Moses Building, to build on F Street, the Perpetual Building Association.

He said: If we can buy your property, we might stay here. If we cannot, we will go up in the Moses Building.

I didn't say anything to him on that particular point because I didn't think my saying it would have any weight because if he wanted to go up, he would not ask me.

So he says: How much would you take? And I told him I don't know exactly how much I would take at the time.

So he said: You can an idea and bring it in. So I
140 probably went back and spoke to my sister about it, and she said: Well, she says, I don't know just what to tell them.

I have got a business there, and I says: I am not going out of business after being there 35 years. What would you do? And she said: I don't know.

And I went back to Mr. Baltz on that and I told him: I don't know unless I got a price, a big enough price, whether I could afford to sell.

Of course, Mr. Baltz always tried to give me the impression he didn't care whether he got mine or not because they had other things in the fire. Then he said to me, I think, would I take an offer of \$200,000, something like that, and I says, no, and then I probably gave him—well, he says: They will have a meeting and he knew what was going on, and he says to me this particular time, he says: It seems like an amount I think reasonable is \$200,000 or \$225,000, and he says, but the board won't give me above \$175,000.

Of course, as I say, they were dickering with the other property and let my own drop back, and after that I didn't remember exactly how much price we were speaking to each other about until the time that we came into his office, not specially to his office, to the Perpetual, in the morning, and he called me over and asked me something about the board having a meeting, and he said: I have been dickering with these people upstairs, and he said: They just—I
 141 can't get a head nor tail with them, and he says: I will tell you what I want you to do. He says: I want to show them that you will not take anything less than \$250,000 if you sell, and I told him: Mr. Baltz, that is all right with me.

So Mr. Baltz drew up a piece of paper, and I signed it. That is where that single piece of paper comes in.

Q. Is that Plaintiff's Exhibit B? I show it to you. A. That is right.

Q. Now, prior to signing Plaintiff's Exhibit B, dated September 12th, had you talked to your sister about what price you would take for both properties? A. No, I didn't talk to her because Mr. Baltz said he would like to see her when she came in, if she would give him the same kind of piece of paper on her property.

Q. Did Mrs. Basseches tell you that they told her anything about a \$250,000 offer prior to the time you had this conversation with Mr. Baltz? A. He didn't speak to her; he spoke to me first.

Q. But she told you? A. No, she didn't tell me anything because I don't think he saw her at that time. I was the first one he saw or spoke to in regard to taking the offer up to the board to see if they would pay at least that much.

Q. At the time this was signed was there any dis-
 142 cussion whether that was or wasn't a contract? A. It was never mentioned as a contract.

Q. What was said about it? A. He just said he wanted my signature and my sister's signature on a piece of paper to show that it was, that they would offer \$250,000.

Q. Did he say anything as to how much the deposit would be? A. Oh, no money was involved at all. It wasn't a question of money, of any deposit.

Q. Was there any statement made to you or did you say to him how the \$250,000 would be split?

* * *

143 Q. After you signed that letter of September 12th—incidentally, how many copies did you sign?

A. I signed a half dozen copies.

Q. Do you remember how many you signed? A. Not especially. I would sign anything Mr. Baltz wanted us to make up for him.

Q. After you signed it, did you discuss the matter with your sister? A. I think I called her up. I didn't talk to her at all that particular day that I signed the paper.

Q. Did you talk to her later about it? A. I told her Mr. Baltz would like to see her because he told me that he wanted —

* * *

The Witness: I talked to her on the phone that night.

* * *

144 Q. Was there any discussion about you getting a two-year lease? A. Not at that time. We were not thinking about a lease.

Q. Did she show you the paper, Defendants' Exhibit No. 1, this little paper in her handwriting, to give you a two-year lease at \$175? Did she tell you about this paper or did you ever see it at that time? A. I saw this after that was signed. We signed that paper that was brought in to me. This was given afterward, after we signed.

Q. Then you didn't discuss with her about getting a two-year lease? A. I was the one that suggested it.

Q. When did you suggest it to her? A. Probably I had it done after we signed a new copy in there.

Q. You mean the letter of September 15th, the second letter that you signed together? How did it get in
145 the letter of September 15th if you discussed it after and not before? A. They probably made a new piece, a new letter on it.

Q. You didn't make any letter after September 15th, did you? A. Not that I know of.

Q. Do you know how it got into the letter of September 15th? A. Into the letter?

Q. Yes. A. They probably made a new one. I might have signed a second time, I don't know. They might have made a new copy, and she brought it into my office again, and I signed it again. I might have signed three or four; I don't remember.

Q. Well, the last one you signed on September 15th, did you discuss it prior so it would be inserted in the letter of September 15th? That is the last one? A. There must have been another one. We put this into this.

Q. Before this one I show you? A. That is right.

Q. It wasn't in that one? A. It wasn't in that. This was put in after. Another one was signed. This may be the second one I signed, and they may be destroyed or they kept it.

Q. Did you discuss the insertion of that in the let-
146 ter prior to September 15th? A. He put that in there after she brought one in, and I sent her back to tell Mr. Baltz.

Q. Was that the same day? A. It could have been two days later.

Q. Was there any letter signed after September 15th and predated? A. No, this is the last one. Probably there was one or two days before.

Q. You mean before September 15th? A. I am trying to recall this, this whole thing. This might have been put in before this was delivered, and it is hard for me to remember that. This might have been the only paper signed, and it might have been two papers signed and destroyed, and I didn't pay particular attention.

Q. I am trying to find out. You say two days after September 15th? A. Yes, sir.

Q. If you say after the letter of September 15th, how did it get in there on the 15th? A. This might have been put in before we actually signed, or it could have been put in, tore up, and another one put in.

Q. Did you discuss it after the last letter or was it
147 before the last letter? A. Before the last letter. If
this is the last letter and it is in there, we had to discuss this before to get it in there.

Q. All right. Now, were you present when the letter of September 15th was signed with your sister, at the same time? A. This was brought to me. I signed this in my store.

Q. Who brought it to you? A. My sister.

Q. Did you have any discussion with Mr. Baltz about that particular letter of September 15th? A. I don't think so, I haven't, after I signed this paper.

* * *

148 Q. When was the next time you had conversation
with Mr. Baltz or someone from the Building Associa-
149 tion about the letter of September 15th?

* * *

A. I think Mr. Baltz' nephew came in and asked me, and said: Mr. Baltz wants to see you.

* * *

Q. What was said at that time? A. At that time he told me that the board had decided that they would offer me the \$250,000.

Q. What did you tell him at that time? A. I told him: Mr. Baltz, I have changed my mind.

Q. Was there any further discussion? A. Well, he looked at me and asked why I changed my mind, and I said: Mr. Baltz, I have just changed my mind; that is all. It is just that is all I said, that I changed my mind.

* * *

150 Q. After that did you have any further conversation with anyone from the Building Association? A. Yes, after that, and I don't know just when it was, my sister came in.

* * *

151 Q. Now, at that place, what was said to you? A. They asked me what is the matter that I changed my mind, and I told him I changed my mind because I didn't think I could benefit by the sale.

Q. Did they ask you how or why? A. I told them it was my business, that I would be the loser if I sold because I could not locate to satisfy myself on the sale.

Q. Did they present any papers to you, particularly Plaintiff's Exhibit lettered D and E? Did you see whether they exhibited that paper to your sister? Were those papers presented to you or both of you? A. No, no papers were presented at that time.

* * *

Q. Did they present you or offer you a check or
152 any money in the sum of, let us say \$2500? A. There was no reason for offering me any money.

Q. My question is: Did they? A. No, they didn't.

Q. Did they discuss when settlement would be made, if settlement was to be made? A. They could not discuss that because I didn't accept the offer.

Q. Now, on September 15, 1945, did you have a lease that prevailed upon your property in favor of any tenant?

* * *

A. The one who was in the grill and bar.

Q. Is that a store in your building? A. That is right.

* * *

Q. On September 15, 1945, you say there was a
153 lease on the store, the restaurant? A. That is right.

Q. How much more time did the lease have to go
on September 15, 1945? A. Maybe six months, or some-
thing like that effect. I would not know unless I looked at
the lease.

* * *

154 Q. Now, Mr. Yeager, if you were required to go
through with the contract, what would become of your
business? A. I would have had to go out of business.

* * *

156 CROSS EXAMINATION:

By Mr. Ryan:

Q. Mr. Yeager, when you entered into this paper writ-
ing and offered to sell the property for \$250,000, how much
did you allow yourself in that figure for your business? A.
None.

* * *

Q. At that time you anticipated you would be able to
remove your business and establish it somewhere else, did
you not? A. I thought I could finally make a profit; yes.

* * *

158 Q. Then when you gave him the paper writing on
September 12th, didn't you give it to him as a proper
writing indicating the price for which you would be willing
to sell the property concerned? A. If I accept. He was
going to take it up to the board and find out if they would
give that much. Then he would let me know if they were

going to give that much, and I would decide whether I would accept.

* * *

159 Q. Didn't you and your sister, before September 12, 1945, discuss the price of \$250,000? A. No.

Q. And then I ask you, Mr. Yeager, if on page 44 of the same deposition, dated October 15, 1947, in response to my question on direct examination, referring again to the same letter: "Has this letter any reference to Lot 814?" If you did not answer: "I gave him that paper that I would be willing to offer to sell them the property"?

Did you say that or not? A. I don't remember.

Q. Did you say it or not? A. Did I say it? If
160 you have it there, I must have said it.

Q. And in response to the next question: "Question: For \$250,000?" Did you not answer: "That is right"? A. That I would sell for \$250,000?

Q. Yes, sir. A. I didn't say that I would sell it. I might have said if I have an offer, to accept it.

Q. Isn't your answer to my question: "For \$250,000?" And your answer is: "That is right"? A. O. K.

Q. And didn't I ask you: "Now, had you discussed this with your sister, Mrs. Basseches?" To which you replied: "In respect to the property?"

Did you make that reply to that question? A. I did.

Q. And then I asked you, the question was: "Yes," to which you replied: "Sure"? A. You mean if I talked with my sister?

Q. Yes. A. I did.

Q. That is what I asked you. A. I must have talked to her.

* * *

162 Q. But you agreed to accept an offer of \$250,000, did you not? A. We did.

Q. That is right. And didn't they make you an offer of \$250,000? A. They did.

Q. And didn't they make that offer before September 24, 1945? A. I don't know just what day it was after that meeting day; whenever they had the meeting, whenever that time was.

Q. A day or two after the meeting, according to
163 your own testimony. A. Either a day or two later than the meeting because I wasn't there. I could not say.

* * *

Q. What did Mr. Baltz tell you? A. He told me that he had finally got the board to offer me \$250,000, and I told him, I refused it right there.

Q. Did he tell you the board agreed to offer you \$250,000, that the board had accepted your offer? A. He said the board is agreeable to offer me \$250,000.

Q. I will ask you, Mr. Yeager, if on October 15, 1947, at page 50 of your deposition in response to this question asked by me on direct examination: "What did he say when you went to see him?" If you did not then reply: "He said that the board had accepted"? A. The board had offered.

Q. You didn't say that on that day? A. I might have said it. I don't remember exactly the words I said
164 to you there. I haven't got a book in front of me to know the exact words I spoke.

Q. Do you deny that you said he said the board accepted? A. I might have used that language. If you have it, I must have said it.

* * *

165 Q. What did you do, Mr. Yeager, with this letter, Plaintiff's Exhibit B, after you signed the letter of September 12th? A. What did you do?

166 Q. What did you do with the letter? A. With the letter?

Q. Yes. A. In what way?

Q. What did you do with it? A. I didn't even have a copy of it.

Q. Do you know where that letter came from? A. Yes, sir.

Q. This one that you have in your hand, Plaintiff's Exhibit B? A. The only place it could come from was Mr. Baltz. That is the only one that had a copy like that.

Q. Do you know that letter was produced by your counsel in this case? A. I don't know. I mean, if he made a duplicate. As I told you, I might have signed a half a dozen for Mr. Baltz then.

Q. Did you give that letter to Mr. Miller before the case started? A. If he had that, I gave it.

* * *

167 Q. And you had that copy in your possession, didn't you? A. I might have had the copy; I don't remember.

* * *

168 Q. When did it come about between September 15th and 12th, that your sister prepared the paper, the paper which is Exhibit No. 1? A. These were in before or after? She came in, and whether we signed another one there, I don't know. That was put in after she came in to me to sign, and I told her at that time, I said: Before we let Mr. Baltz do anything, you better let him know in case we do decide to sell, that I would have to have two years' extension.

* * *

169 By Mr. Ryan:

Q. So you gave her that slip of paper? Did you give her that slip of paper? A. I don't know.

Q. Defendants' No. 1, which says: I must have two years' lease. Did you give her that? A. I didn't give it to her. I dictated the paper.

Q. You dictated the paper to her? A. Yes, sir.

Q. What did you tell her to do with it? A. Give it to Mr. Baltz.

Q. What was he to do with it after he got it? A. Put it in the paper before it went to the board.

Q. To put it in the paper before it went to the board?
A. In the same paper; that is right.

Q. In what paper? A. Whatever paper he was going to send up, the letter he was going to send up for the board, and see if they could get \$250,000.

Q. In other words, he was to put it in some paper he had already prepared, of September 12th. Isn't
170 that the paper? A. That is what I wanted. Mr. Baltz' word was good enough. I just showed it to him and he would keep his word. This was so he would know; that is what it would have to be.

Q. So, anyway, you discussed it with your sister and it came into the paper? A. That is right.

Q. And after it came into the paper, when did you next see the paper that had it in? A. When did I see the paper?

Q. When was the next time? A. If it is in that paper and my signature is on it, I imagine I must have saw it when I signed it.

Q. That is September 15, 1945? A. That is right.

Q. When you first saw the paper September 15, 1945, were there any signatures on it? A. Not if it was brought in to me to sign. She might have had her signature in there, I don't know, but my signature wasn't on it.

* * *

Q. How many copies of this did you sign? A. I might have signed three of them. I might have

171 signed a half dozen. It didn't mean anything to me,
and I will sign anything.

Q. You will sign anything? A. Yes.

* * *

Q. What discussion did you have with your sister at the time this paper was brought up by your sister from the Building Association? A. Not a heavy conversation at all.

Q. Did you look at the paper to see if the provision was in there giving you a two-year lease? A. After she took it in there?

Q. Did you look to see? A. No, I didn't.

Q. Did you look to see if the \$250,000 was in there?
A. I didn't look at any figures on it, I didn't.

Q. You didn't read it at all? A. I didn't pay
172 any attention. It might have been \$50; it would have been just the same to me.

Q. Was anyone else present when you signed? A. Anybody else present?

Q. Yes. A. No; just my sister and I.

Q. What did you do with it after you signed? A. I gave it back to her.

Q. Did you tell her what to do? A. I knew what she was going to do. She was going to carry it to the Building Association.

Q. That was the last time you saw that? A. That is the last I saw of it.

Q. And when it was brought to you on this date, Mr. Yeager, did your sister ask you to sign it or did you just sign it voluntarily? A. What was that?

Q. On September 15th. A. When she brought it to me?

Q. Yes. A. I signed it voluntarily. She didn't have to make me sign it.

* * *

173 Q. And the new paper was the one incorporating the new provision? A. That is right. I didn't even read it. I figured she put it in there and so Mr. Baltz knew.

Q. What did you think she meant, if you thought at all, when she told you Mr. Baltz told her he wanted them both on one paper? A. I didn't pay any particular attention to what she meant. It is the same as the first one. I understand what he told me. I went and signed it.

* * *

174 Q. What did she tell you? A. Just told me, she said: Mr. Baltz changed this paper and sign it. He said: I am going to send it to you to sign it. It is the same as this one.

* * *

Q. What do you mean when she said it is the same as this paper? A. She didn't say it. I knew it was the same thing and that is the reason I didn't read what was in there.

* * *

175 Q. You and your sister had agreed on this split that both of you testified about, \$150,000 for your property and \$100,000 for hers? A. That is right.

Q. And that was an acceptable division? A. That is right.

* * *

175 The Court: Well, gentlemen, it certainly strains my credulity to believe that individuals would sign instruments of the character here that were signed without having full cognizance of their import.

Mrs. Basseches stated she was very careful as to what she signed, and that she did sign it, despite the fact that Mr. Yeager said he would sign anything.

176 Now, to me the situation factually is this: The original letter of September 12, 1945, having in mind all the evidence in this case, that is, as to the instrument itself and the surrounding circumstances and the relationship between the parties, was an offer to sell, and then as an afterthought, Mr. Yeager began to speculate as to what would happen to his business, and I find as a fact that there must have been as a consequence, despite their testimony to the contrary, some discussion of that possibility. As a result of that this memorandum that Mrs. Basseches brought back to Mr. Baltz to have incorporated in the arrangement was made and was incorporated in it.

So it indicates to me, despite the protestations to the contrary, that these people knew what they were doing. I think Mr. Yeager knew that he was protecting himself as best he could, as far as his present situation is concerned, if the offer that they were making, and I view it as an offer and hold it to be an offer, this so-called letter of September 15, 1945, was accepted.

I find it was a valid offer and I find it was accepted. Now, further proof of the pudding, if you put it that way, is in the testimony with respect to the leases. I am asked to believe that Mr. Baltz, out of some knowledge that he previously had, knew, one, the fact of the leases, and, two, the nature and extent. I do not believe that. I believe he was told.

177 Also in this purported executory contract of sale I cannot conceive how Mr. Baltz or anyone else in the same circumstances would know what the division was to be of this \$250,000.

Mr. Yeager supplied the key to that when he testified that he was to receive \$150,000 and Mrs. Basseches was to receive \$100,000. While she did not testify categorically to that effect, she said she felt her brother was entitled to more money than she was. So with those facts present, it not only lends color but lends conviction to the view I expressed, and a fact which I find, that there was an offer made on September 15, 1945, which was accepted on September 17, 1945, and I find the acceptance within the time limit was communicated to both parties that are now seeking to be charged by the plaintiff. That is the nub of the situation and that is the ultimate issue of fact in this case.

Now, I know, Mr. Miller, you are going to make a point of it because you have indicated it to me in the motion for a finding in favor of the defendants that even though that was the situation, that that is not an offer and acceptance upon which can be predicated a suit of this kind for specific performance. I think you are going to say that of necessity the executory contracts of sale must be made. I do not agree with you and I do not think that there is any authority to support that view.

Mr. Miller: I think I have some.

178 The Court: Well, maybe there is, but as I view it, it is a simple offer and a simple acceptance for which specific performance is asked. Now, I do not think that there is any executory contract that has to be entered into in order to fill in the interstitial spaces, or details.

I find that despite language that may be characterized as inept, certainly not lawyer-like, because a lawyer did not draw that instrument, that the intent was clear of the parties and that there was a meeting of the minds.

Therefore, under that view of the case, as I see it, I think under the circumstances that the plaintiff, from the standpoint of Mrs. Basseches, at least, is entitled to specific performance.

However, with respect to Mr. Yeager, there is a very difficult question of law involved. I do not think, Mr. Ryan, at this stage of the proceedings that the plaintiff can charge lack of knowledge of the marital status of Mr. Yeager. In 1942 they issued a passbook, presumably covering an alleged indebtedness of both Mr. Yeager and his wife to the Building Association, and there is an estoppel, in fact at least, if an offer is made to question the fact that the association did not know he was married.

179 Now, Mr. Miller introduced a tax bill for 1938 in which is disclosed the fact, which is not a fact but is to make clear, from the standpoint of the District of Columbia, that he is an unmarried person. But the fact is he is a married man and he has been married since 1931.

* * *

199 Findings of Fact and Conclusions of Law

FINDINGS OF FACT.

(Filed Feb. 5, 1948.)

This cause coming on to be heard before the Court upon the pleadings heretofore filed herein and such evidence as was adduced in open Court, and upon full and complete hearing being had the Court hereby finds the following facts:

The defendant, Rose B. Yeager Basseches, is the fee simple owner of Lot 814, Square 321, in the City of Washington, District of Columbia, improved by premises 506 Eleventh Street, Northwest.

The defendant, Samuel Yeager, is the fee simple owner of Lot 813, Square 321, in the City of Washington, District of Columbia, improved by premises 508 Eleventh Street, Northwest.

The defendant, Samuel Yeager, is married to the defendant, Ethel Yeager, having been so married since 1931.

The defendants, Samuel Yeager and Rose B. Yeager Basseches, conducted negotiations intermittently from 1931 until September 15, 1945, seeking the possible sale of the premises 506-508 Eleventh Street, Northwest, unto the plaintiff, Perpetual Building Association. During the course of those negotiations various prices were expressed as being possible sale prices for the premises concerned; however, for various reasons the parties above referred to during the interval mentioned before failed to come to any understanding for a sale and purchase of the premises involved.

On August 14, 1944, plaintiff, Perpetual Building Association, through its Board of Directors, appointed a committee comprised of Messrs. Baltz, Scrivener, Sr., and Owen to negotiate with the defendants, Samuel Yeager and Rose B. Yeager Basseches, for the purchase of premises 506-508 Eleventh Street, Northwest, and thereafter the above committee principally through the efforts of Mr. Baltz intensified its efforts in coming to some understanding with the above named defendants for the purchase of their respective properties.

On or before September 12, 1945, the defendants, Samuel Yeager and Rose B. Yeager Basseches, communicated

to the plaintiff an offer to accept the sum of two hundred fifty thousand dollars (\$250,000) for the two (2) properties concerned, provided, plaintiff should indicate its acceptance of the foregoing offer on or before four o'clock p. m., September 24, 1945. The above proposal was thereupon reduced to writing in the form of a letter directed to the plaintiff which letter was thereupon duly signed by the defendant, Samuel Yeager.

It thereupon appeared upon reconsideration by the defendants, Samuel Yeager and Rose B. Yeager Basseches, that no provision had been made for the preservation of the business then being conducted at premises 508 Eleventh Street, Northwest, by the defendant, Samuel Yeager, for which reason these defendants on or about September 15, 1945, requested the plaintiff to modify the offer which they, defendants, had proposed on September 12, 1945, and upon such request plaintiff acceded to the modification. The modification requested was the extension of a lease agreement to the defendant, Samuel Yeager, for a period
 201 of two (2) years for the space occupied by him in premises 508 Eleventh Street, Northwest, at a rental not to exceed one hundred seventy-five dollars (\$175.00) per month for a period of two (2) years after settlement of any sale consummated with the plaintiff.

The offer of the defendants, Samuel Yeager and Rose B. Yeager Basseches, was thereupon reduced to writing and the two defendants aforementioned thereupon individually and jointly agreed to accept the sum of two hundred fifty thousand dollars (\$250,000) all cash for the properties herein concerned, said acceptance to be made by the plaintiff on or before four o'clock p. m., September 24th, 1945.

On September 17, 1945, a meeting of the Board of Directors of the plaintiff corporation was held and at that meeting the Board authorized the acceptance of defend-

ants' offer and directed its officers to execute any necessary papers required for the purchase of defendants' property in accordance with defendants' proposal.

Thereafter, Mr. Baltz, acting on behalf of the plaintiff, communicated with the defendants and from them ascertained that in the sale to be made of their properties defendant, Rose B. Yeager Basseches, was to receive the sum of one hundred thousand dollars (\$100,000) all cash and that her premises were then subject to a lease agreement expiring March 15, 1949, and that the defendant, Samuel Yeager, was to receive the sum of one hundred fifty thousand dollars (\$150,000) all cash and that his premises were then subject to a lease agreement expiring March, 1946. As a result of the information aforesaid, plaintiff thereupon prepared formal agreements encompassing the full understanding of the parties and requested defendants to appear at plaintiff's offices to execute such formal agreements and to proceed with the consummation of their respective sales of their properties to plaintiff. The requested appointment for execution of the contracts aforesaid was prior to four o'clock p. m., September 24, 1945.

202 Upon the occasion of the appointment arranged as aforesaid, the defendants, Samuel Yeager and Rose B. Yeager Basseches, appeared but thereupon advised plaintiff that they had changed their minds and no longer desired to sell their properties. Whereupon, defendants have at all times subsequent thereto refused to proceed to a consummation of the sale of their properties to plaintiff.

It does not appear that the defendant, Ethel Yeager, participated in any of the above mentioned negotiations nor was she requested to nor did she sign or execute any of the paper writings to which reference is hereinbefore made.

CONCLUSIONS OF LAW.

Upon the foregoing facts the Court concludes as matters of law the following:

1. The letter executed by defendants, Samuel Yeager and Rose B. Yeager Basseches, dated September 15, 1945, directed to plaintiff, constituted a joint and several offer of those defendants to sell to plaintiff their respective properties.

2. The offer of defendants, Samuel Yeager and Rose B. Yeager Basseches, was accepted according to its terms by the plaintiff prior to any attempted revocation thereof.

3. Plaintiff is and was at all times subsequent to its notification to defendants of its acceptance of defendants' offer ready, willing and able to fulfill its obligation for the consummation of its purchase of defendants' properties.

4. Defendants, Samuel Yeager and Rose B. Yeager Basseches, are jointly and severally liable unto the
203 plaintiff for performance of their agreements with plaintiff, but the law in this jurisdiction is established to the effect that, in the absence of the consent of the wife of a married man, no specific performance will lie to force a conveyance of such wife's dower interest without her consent for which reason the Court concludes that the defendant, Rose B. Yeager Basseches, is legally obligated to specifically perform her agreement by the conveyance of her property to plaintiff upon payment of the purchase price therefor but that defendant, Samuel Yeager, in the absence of the consent of his wife thereto, may not be so required to specifically perform his contract.

MATTHEW F. McGUIRE,
Justice.

204 **Judgment for Specific Performance**

(Filed Feb. 5, 1948.)

Upon consideration of the findings of fact and conclusions of law entered in this cause the 5th day of February, 1948, and it appearing to the satisfaction of the Court that the following is a proper decree and judgment herein, it is by the Court this 5th day of February, 1948,

ADJUDGED, ORDERED AND DECREED: That the defendant herein Rose B. Yeager Basseches convey and deliver unto the plaintiff, Perpetual Building Association by a good and proper deed fee simple title to Lot 814, Square 321, in the City of Washington, District of Columbia, together with all improvements thereon upon payment by the plaintiff to the defendant, Rose B. Yeager Basseches, the sum of one hundred thousand dollars (\$100,000).

IT IS FURTHER ADJUDGED, ORDERED AND DECREED: That this action be dismissed insofar as the defendants, Samuel Yeager and Ethel Yeager, are concerned.

AND IT IS FURTHER ORDERED: That the plaintiff herein shall recover from the defendant, Rose B. Yeager Basseches, their lawful costs in this action.

AND IT IS FURTHER ORDERED: That jurisdiction of this cause be herein retained by this Court for any other or further order which may be necessary or requisite to give full force and effect to this judgment.

MATTHEW F. McGUIRE.
Justice.

205

PERPETUAL BUILDING
ASSOCIATION,

Plaintiff.

vs.

ROSE Y. BASSECHES,

Defendant.

Civil No. 34,179.

Notice of Appeal

(Filed May 5, 1948.)

Notice is hereby given this 5th., day of May, 1948, that Rose B. Yeager Basseches hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 5th., day of February, 1948 in favor of Perpetual Building Association against said Rose B. Yeager Basseches.

HERMAN MILLER,

Attorney for Defendant

Rose B. Yeager Basseches,

800 H Street N. W.

Mail to:

HARRY L. RYAN, Esq.,

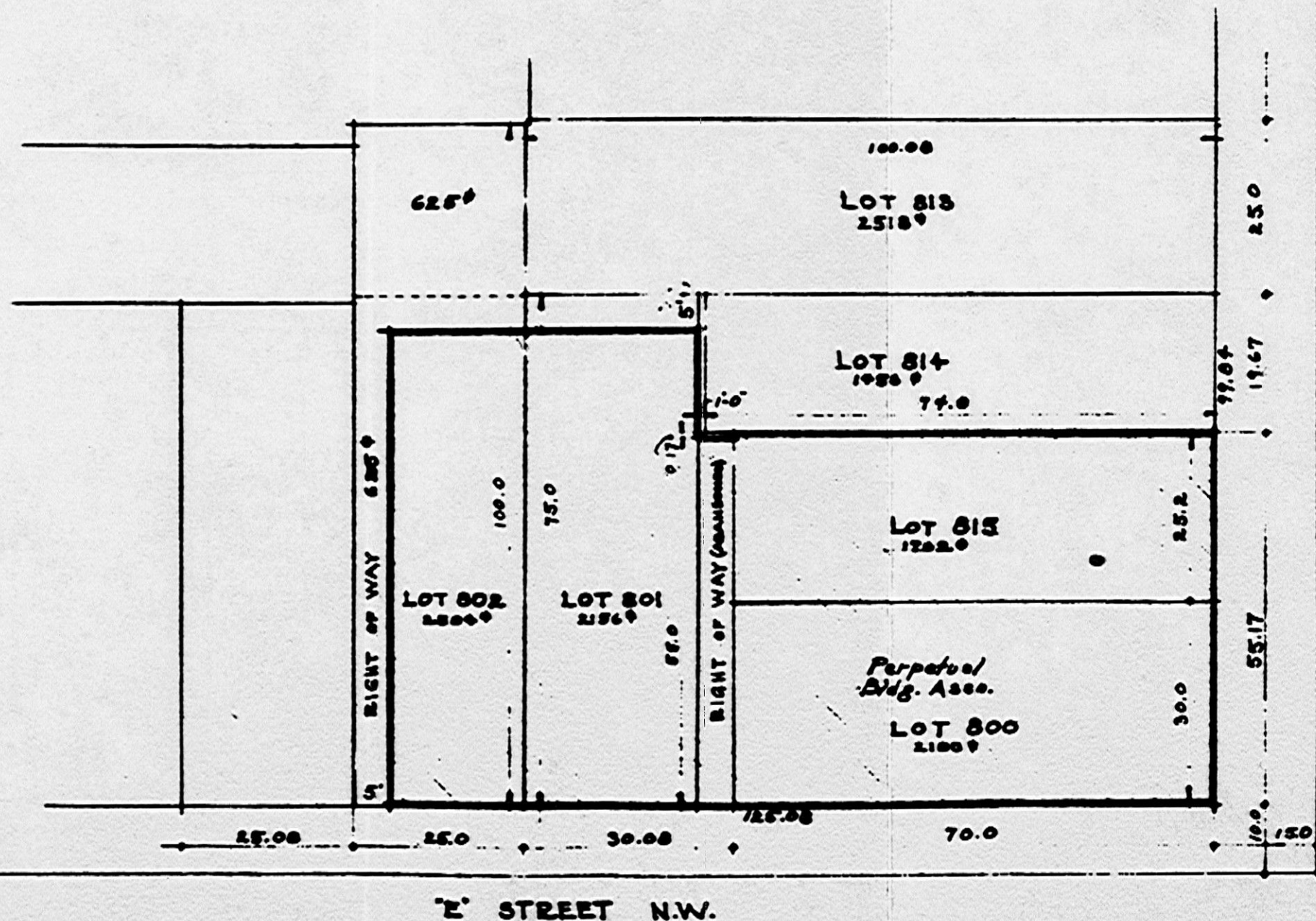
815-15th St. N. W.

Attorney for Plaintiff.

TAX LOT NUMBERS SHOWN
 LOT-1, PARTS OF LOTS - 2, 3 & 16
 SQUARE 321

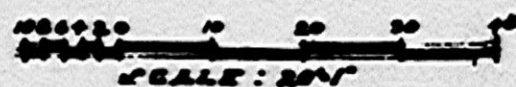
Plaintiffs Exhibit A

209



11 TH. STREET

Plat of E. A. Reed 209



210

Plaintiff's Exhibit B**PERPETUAL BUILDING ASSOCIATION**

**ASSETS SIXTY-SEVEN MILLION DOLLARS SURPLUS OVER FIVE
MILLION DOLLARS**

**Eleventh and E Streets Northwest
Washington 4, D. C.**

September 12, 1945.

(Filed Jul 29 1948.)

**Mr. Edward C. Baltz, Secretary
Perpetual Building Association
500-11th Street, N. W.
Washington, D. C.**

Sir:

We understand that the Board of Directors of Perpetual Building Association at its scheduled meeting on September 17, 1945 will consider the question of offering to purchase certain real estate in the District of Columbia owned by us and described as follows:

- (1) Lot 814, Square 321, improved by premises know as 506 Eleventh Street, N. W.—owned by Rose B. Yeager Brasseches.**
- (2) Lot 813, Square 321, improved by premises known as 508 Eleventh Street, N. W.—owned by Samuel Yeager.**

We each individually and jointly agree to accept an offer made by Perpetual Building Association to purchase the described real estate for the sum of Two Hundred and Fifty Thousand Dollars (\$250,000), provided such offer is made before 4:00 P. M. on September 24th, 1945.

It is understood that the full purchase price as stated above will be paid in cash at time of settlement.

We warrant that we will deliver fee simple title.

Very truly yours,

SAMUEL YEAGER

SAMUEL YEAGER

.....
ROSE B. YEAGER BASSECHES

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Plaintiff's Exhibit C

PERPETUAL BUILDING ASSOCIATION

**ASSETS SIXTY-SEVEN MILLION DOLLARS SURPLUS OVER FIVE
MILLION DOLLARS**

**Eleventh and E Streets, Northwest
Washington 4, D. C.**

September 15, 1945

**Mr. Edward C. Baltz, Secretary
Perpetual Building Association
500-11th Street, N. W.
Washington, D. C.**

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It is understood that the full purchase price as stated above will be paid in cash at time of settlement.

We warrant that we will deliver fee simple title.

It is to be understood that, Samuel Yeager, will be extended a lease of two years from date of settlement for space he now occupies in 508-11th N. W. at a rental not to exceed \$175.00 per month.

Very truly yours,

SAMUEL YEAGER	ROSE B. YEAGER BASSECHES
SAMUEL YEAGER	ROSE B. YEAGER BASSECHES

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Plaintiff's Exhibit D

SALES CONTRACT

Official Standard Form Adopted by the
Washington Real Estate Board ¹⁷⁰⁷

LAW REPORTER BLANK No. 363
518 Fifth St. N. W. Washington, D. C.

September, 1945

RECEIVED FROM Perpetual Building Association a deposit of Twenty-five hundred Dollars (\$2,500.00) to be applied as

part payment of the purchase of Lot 813 in Square 321, with improvements thereon known as No. 508-11th Street, N. W. in the District of Columbia, upon the following terms of sale:

Total price of property One hundred fifty thousand dollars (\$150,000.) net.

The purchaser agrees to pay One hundred fifty thousand dollars (\$150,000.) cash at the date of conveyance, of which sum this deposit shall be a part.

The purchaser is to assume, give, place, take title subject to, a first deed of trust secured on the premises of Dollars (\$) due...., 194..., bearing interest at rate of per cent per annum, payable

The balance of deferred purchase money is to be secured by a deed of trust on said property, to be paid in monthly installments Dollars (\$) or more, including interest at the rate of per cent per annum, each installment when so paid to be applied, first, to the payment of interest on the amount of principal remaining unpaid and the balance thereof credited to principal.

Trustees in all deeds of trust are to be named by the parties secured thereby.

The property is sold free of encumbrance except as aforesaid; title is to be good of record and in fact subject, however, to covenants, conditions and restrictions of record if any; otherwise said deposit is to be returned and sale declared off at the option of the purchaser, unless the defects are of such character that they may readily be remedied by legal action, but the seller and agent are hereby expressly released from all liability for damages by reason of any defect in the title. In case legal steps are necessary to perfect the title, such action must be taken by the seller promptly at his own expense, whereupon the time herein specified for

full settlement by the purchaser will thereby be extended for the period necessary for such prompt action.

Rents, taxes, water rent, insurance and interest on existing encumbrances, if any, and operating charges are to be adjusted to the date of the transfer. Taxes, general and special, are to be adjusted according to the certificate of taxes issued by the Collector of Taxes of the District of Columbia, except that assessments for improvements completed prior to the date hereof, whether assessment therefor has been levied or not, shall be paid by the seller or allowance made therefor at the time of transfer.

Examination of title, tax certificate, conveyancing, notary fees and all recording charges, including those for purchase money trust if any, are to be at the cost of the purchaser; provided, however, that if upon examination the title should be found defective the seller hereby agrees to pay the cost of examination of the title and also to pay to the agent herein a commission hereinafter provided for just as though the sale had actually been consummated and all the terms of this contract complied with.

Within thirty days from the date of acceptance hereof by the owner, or as soon thereafter as a report on the title can be secured if promptly ordered, the seller and purchaser are required and agree to make full settlement in accordance with the terms hereof. If the purchaser shall fail so to do, the deposit herein provided for may be forfeited at the option of the seller, in which event the purchaser shall be relieved from further liability hereunder, or without forfeiting the said deposit the seller may avail himself of any legal or equitable rights which he may have under this contract. In the event of the forfeiture of the deposit, the seller shall allow the agent one-half thereof as a compensation for his services to him.

Settlement is to be made at the office of District Title
(Name of Broker)
 Company or at the Title Company searching the title, and
 deposit with the Title Company or with
(Name of Broker)
 of the purchase money, the deed of conveyance for execu-
 tion and such other papers as are required of either party
 by the terms of this contract shall be considered good and
 sufficient tender of performance of the terms hereof.

Seller agrees to execute the usual special warranty deed.
 Property is sold subject to an existing tenancy as follows:
 leased to March 1946.

Seller agrees to give possession at time of settlement,
 and in the event he shall fail so to do he shall become and be
 thereafter a tenant by sufferance of the purchaser and here-
 by waives all notice to quit, as provided by the laws of the
 District of Columbia. (Strike one of the two foregoing
 sentences.)

The risk of loss or damage to said property by fire or
 other casualty until the deed of conveyance is recorded is
 assumed by the seller.

All notices of violations of Municipal orders or require-
 ments noted or issued by any department of the District of
 Columbia, or prosecutions in any of the courts of the Dis-
 trict of Columbia on account thereof against or affecting
 the property at the date of the settlement of this contract
 shall be complied with by the seller and the property con-
 veyed free thereof. This provision shall survive the de-
 livery of the deed hereunder.

The seller agrees to pay to no commission his agent, the
(Name of Broker)
 regular rate of commission fixed by the Washington Real
 Estate Board amounting to \$, and the Title Com-
 pany, or the Real Estate Office, through which settlement
 is made is hereby authorized and directed to make deduction

of the aforesaid commission from the proceeds of the sale and to make payment thereof to the said agent. Entire deposit to be held by until settlement hereunder is made.
(Name of Broker)

The principals to this contract mutually agree that it shall be binding upon their respective heirs, executors, administrators or assigns.

This contract, made in triplicate, when ratified by the seller contains the final and entire agreement between the parties hereto and they shall not be bound by any terms, conditions, statements or representations, oral or written, not herein contained.

.....
Agent.

We, the undersigned, hereby ratify, accept and agree to the above memorandum of sale and acknowledge it to be our contract.

PERPETUAL BUILDING ASSOCIATION
Purchaser.

By:
Secretary.

It is further agreed that Samuel Yeager will be given a two (2) year lease from date of settlement for space he now occupies in 508-11th Street, N. W. at a rental of \$175.00 per month.

.....
.....
.....
PERPETUAL BUILDING ASSOCIATION
By:
Secretary.

SALES CONTRACT

Official Standard Form Adopted by the
Washington Real Estate Board ¹⁷⁰⁷

Law Reporter Blank No. 363
518 Fifth St. N. W. Washington, D. C.

September , 1945

RECEIVED FROM Perpetual Building Association a deposit of Twenty-five hundred Dollars (\$2,500.00) to be applied as part payment of the purchase of Lot 814 in Square 321, with improvements thereon known as No. 506—11th Street, N. W. in the District of Columbia, upon the following terms of sale:

Total price of property One hundred thousand Dollars (\$100,000.) Net.

The purchaser agrees to pay One hundred thousand Dollars (\$100,000.) cash at the date of conveyance, of which sum this deposit shall be a part.

The purchaser is to assume, give, place, take title to, a first deed of trust secured on the premises of Dollars (\$) due, 194 . . . , bearing interest at the rate of per cent per annum, payable

The balance of deferred purchase money is to be secured by a deed of trust on said property, to be paid in monthly installments of Dollars (\$) or more, including interest at the rate of per cent per annum, each installment when so paid to be applied, first, to the payment of interest on the amount of principal remaining unpaid and the balance thereof credited to principal.

Trustees in all deeds of trust are to be named by the parties secured thereby.

The property is sold free of encumbrance except as aforesaid; title is to be good of record and in fact subject, however, to covenants, conditions and restrictions of record if any; otherwise said deposit is to be returned and sale declared off at the option of the purchaser, unless the defects are of such character that they may readily be remedied by legal action, but the seller and agent are hereby expressly released from all liability for damages by reason of any defect in the title. In case legal steps are necessary to perfect title, such action must be taken by the seller promptly at his own expense, whereupon the time herein specified for full settlement by the purchaser will thereby be extended for the period necessary for such prompt action.

Rents, taxes, water rent, insurance and interest on existing encumbrances, if any, and operating charges are to be adjusted to the date of the transfer. Taxes, general and special, are to be adjusted according to the certificate of taxes issued by the Collector of Taxes of the District of Columbia, except that assessments for improvements completed prior to the date hereof, whether assessment therefor has been levied or not, shall be paid by the seller or allowance made therefor at the time of transfer.

Examination of title, tax certificates, conveyancing, notary fees and all recording charges, including those for purchase money trust if any, are to be at the cost of the purchaser; provided, however, that if upon examination the title should be found defective the seller hereby agrees to pay the cost of examination of the title and also to pay to the agent herein a commission hereinafter provided for just as though the sale had actually been consummated and all the terms of this contract complied with.

Within thirty days from the date of acceptance hereof by the owner, or as soon thereafter as a report on the

title can be secured if promptly ordered, the seller and purchaser are required and agree to make full settlement in accordance with the terms hereof. If the purchaser shall fail so to do, the deposit herein provided for may be forfeited at the option of the seller, in which event the purchaser shall be relieved from further liability hereunder, or without forfeiting the said deposit the seller may avail himself of any legal or equitable rights which he may have under this contract. In the event of the forfeiture of the deposit, the seller shall allow the agent one-half thereof as a compensation for his services to him.

Settlement is to be made at the office of District Title
(Name of Broker)
 Company or at the Title Company searching the title, and
 deposit with the Title Company or with.....

(Name of Broker)
 of the purchase money, the deed of conveyance for execution and such other papers as are required of either party by the terms of this contract shall be considered good and sufficient tender of performance of the terms hereof.

Seller agrees to execute the usual special warranty deed. Property is sold subject to an existing tenancy as follows: leased to March 15, 1949.

Seller agrees to give possession at time of settlement, and in the event he shall fail so to do he shall become and be thereafter a tenant by sufferance of the purchaser and hereby waives all notice to quit, as provided by the laws of the District of Columbia. (Strike one of the two foregoing sentences.)

The risk of loss or damage to said property by fire or other casualty until the deed of conveyance is recorded is assumed by the seller.

All notices of violations of Municipal orders or requirements noted or issued by any department of the District

of Columbia, or prosecutions in any of the courts of the District of Columbia on account thereof against or affecting the property at the date of the settlement of this contract shall be complied with by the seller and the property conveyed free thereof. This provision shall survive the delivery of the deed hereunder.

The seller agrees to pay to no commission, his agent,
(Name of Broker)
the regular rate of commission fixed by the Washington Real Estate Board amounting to \$....., and the Title Company, or the Real Estate Office, through which settlement is made is hereby authorized and directed to make deduction of the aforesaid commission from the proceeds of the sale and to make payment thereof to the said agent. Entire deposit to be held by.....until settlement
(Name of Broker)
hereunder is made.

The principals to this contract mutually agree that it shall be binding upon their respective heirs, executors, administrators or assigns.

This contract, made in triplicate, when ratified by the seller contains the final and entire agreement between the parties hereto and they shall not be bound by any terms, conditions, statements or representations, oral or written, not herein contained.

.....
Agent.

We, the undersigned, hereby ratify, accept and agree to the above memorandum of sale and acknowledge it to be our contract.

PERPETUAL BUILDING ASSOCIATION,
Purchaser
By:
Secretary.

BRIEF FOR APPELLEE

IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT.

No. 9974

ROSE YEAGER BASSECHES, *Appellant,*

v.

PERPETUAL BUILDING ASSOCIATION, *Appellee.*

Appeal from the United States District Court for the
District of Columbia.

*United States Court of Appeals
for the District of Columbia
Circuit*

FILED JAN 10 1949

Joseph W. Stewart

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IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT.

Number 9974.

ROSE YEAGER BASSECHES, *Appellant*,

v.

PERPETUAL BUILDING ASSOCIATION, *Appellee*.

On Appeal from a Judgment for Specific Performance in
Favor of Appellee, Granted by the United States Dis-
trict Court for the District of Columbia.

BRIEF OF APPELLEE.

STATUTE INVOLVED.

Title 12, Section 302, D. C. Code (1940 Ed.): "No action shall be brought * * * to charge any person upon any * * * contract or sale of lands * * * unless the agreement * * * or some memorandum or note thereof, shall be in writing, * * * and signed by the party to be charged therewith or some other person by him lawfully authorized."

COUNTER STATEMENT OF THE CASE.

Appellant has for the most part accurately described and set forth the proceedings below. However, appellee deems it necessary in order that the full import of the letters of September 12 and 15, 1945, may be felt to set forth herein some reference to the manner in which the parties to this action themselves characterized the same.

For example, appellee, at its Board of Directors' meeting on September 17, 1945, considered the letter from appellee, as owner of the property, in which she indicated what she would accept therefor. The Board thereupon directed its officers to "accept this offer," which Mr. Baltz, its Secretary, subsequently did, and which acceptance was thereupon immediately communicated to appellant. (Joint Appendix 19)

Appellant apparently also considered her letter as an offer to appellee for she stated and her counsel admitted that the letter spoke for itself and that until she changed her mind it indicated the terms upon which she and her brother were willing to sell their properties to appellee. (Joint Appendix 51)

Appellant's brother also confirmed the fact that he and appellant were making an offer, not seeking one. (Joint Appendix 62, 63, 64)

SUMMARY OF ARGUMENT.

1. Appellant's letter of September 15, 1945, constituted an offer or option to appellee for the purchase of appellant's property, Lot 814, Square 321, improvements 506 Eleventh Street, Northwest. By correlated memoranda, this offer by virtue of appellee's acceptance became a contract to sell the said property to appellee for One Hundred Thousand Dollars (\$100,000).

2. There was adequate consideration for the agreement sought to be enforced by appellee, for upon appellee's acceptance, it obligated itself unqualifiedly to pay appellant's

agreed price, and even prior thereto sufficient consideration existed to create a binding and subsisting agreement when appellee, pursuant to appellant's offer, held a meeting of its Board of Directors and thereat acted upon appellant's offer. The performance of any such act, constituting difficulty or inconvenience to appellee, and not otherwise legally requisite, constituted sufficient consideration to support the contract.

3. The agreement reached did not lack mutuality as by appellant contended. The mutuality necessary in such cases is provided by the filing of an action for specific performance by the party seeking the same.

4. The offer herein concerned, although made by two persons and covering two properties created a joint and several undertaking and is capable of severance for the purposes of suit. This is true by virtue of specific authorization under the District of Columbia Code and furthermore from the language of the agreement itself.

5. Appellant's offer together with the other writings directly relating to the transaction between the parties fully complied with the requirements of the Statute of Frauds in that said writings named the parties buying and selling, adequately described the property and set forth the purchase price. Accordingly, the agreement may be specifically performed.

ARGUMENT.

1. Appellant has urged that her letter of September 15, 1945, addressed and delivered in person by her to appellee was erroneously construed by the Court as constituting an offer. This argument at best constitutes mere quibbling over form rather than substance and can certainly not be conceded to have any merit.

Stripped to its barest essentials the language used by the parties in the letter aforesaid can be susceptible of but one construction and that is that appellant was agreeable

that appellee should have the irrevocable right at any time prior to four o'clock p. m. on September 24, 1945, to signify its willingness to acquire appellant's property pursuant to the remaining conditions contained in said letter. Call it what you may, this was an offer by appellant for there remained nothing for appellee to do insofar as the matter was concerned but to accept or reject the same. It would have certainly contemplated a ridiculous course of action on the part of the parties to assume that after the meeting of appellee's Board of Directors that it would then be incumbent upon appellee to make appellant a further offer to purchase appellant's property upon terms that appellant had already committed herself to accept. If this is appellant's contention it would logically follow that thereafter appellant would again be required to formally accept that which she had already agreed to accept and then presumably still enter into some further agreement executed by both parties. Such action immediately becomes absurd upon its face.

Furthermore, the only plausible meaning which can be given appellant's letter is that appellant thereby intended to, and unequivocally did afford appellee the right until September 24, 1945, to acquire appellant's premises upon the terms stated in said letter. That this is true is indicated by the testimony of appellant and her brother for their only explanation for refusal to proceed to a conveyance of their properties to appellee was that they had changed their minds after appellee had communicated its acceptance of the offer. The significance of this assertion is that had they not intended the aforesaid letter as an offer on their part to sell, they would not have needed to change their minds, but could have simply treated their letter as a solicitation of an offer to be accepted or rejected when made. However, the fact that they did indicate that they had changed their minds is clearly indicative of knowledge on their part that they were making an offer and not merely seeking one.

The language used by appellant was that she would "accept an offer". "Accept" has been variously defined as "to agree to," "to assent to," "to approve," and said term is accordingly the antithesis of "refusal, rejection or declination." "Offer" as a noun has been defined as "a proposal," "a bid." A simple substitution of definitions immediately indicates again that appellant was in fact assenting to a bid upon her expressed terms for her property. Appellee fully complied therewith and so signified to appellant at a time when appellant had not withdrawn her agreement to accept such a bid or proposal.

It is further significant that appellee's Board of Directors in acting upon appellant's letter on September 17, 1945, was authorized to "accept" appellant's "offer" (Joint Appendix 18, 19) and it further appears from the testimony of Mr. Yeager that he was advised that appellee had accepted appellant's offer. (Joint Appendix 63, 64)

After receiving appellant's letter, appellee called a meeting of its Board of Directors and unqualifiedly accepted her proposal, authorizing its officers to sign all necessary papers to conclude the purchase, which acceptance was then communicated to appellant and an appointment thereafter made for formal execution of the necessary papers to complete the purchase of appellant's property. When this acceptance by appellee's Board of Directors had been made and communicated to appellant prior to four o'clock p. m. on September 24, 1945, appellant's offer thereupon immediately ripened into a contract for upon authorization and direction by the Board of Directors to appellee's officers to execute such papers as were necessary to purchase appellant's property a complete meeting of the minds was reached and mutual obligations created. Appellee through its Board of Directors had agreed to "accept this offer" (appellant's) and had affirmatively directed its officers to execute all necessary papers "for the purchase of this property," not merely to negotiate further therefor.

2. At this point there was unquestionably a valid and subsisting consideration existing between both parties, at least when appellee had communicated its acceptance to appellant for then appellant had promised to sell and appellee to purchase and pay for appellant's property.

Appellant has urged that there was no consideration supporting any agreement on her part to sell. It has long since been held that a promise by one party is a sufficient consideration for a promise by the adverse party. 12 Am. Jur. 606, *Storm v. United States*, 94 U. S. 76, 24 L. ed. 42. Accordingly, communication of appellee's acceptance of her offer to appellant by Mr. Baltz, for appellee, constituted a promise on its part to pay the purchase price agreed upon and immediately supplied any lack of consideration which may have theretofore existed.

However, ample consideration existed even prior to this. Insignificant though it may seem it would appear that the mere action of appellee's Board of Directors in meeting and considering appellant's offer and thereafter disbanding its negotiating committee and appointing a building committee would suffice to supply any consideration previously lacking. This is true for (1) such was stated in appellant's letter as being the inducement for the making of her commitment and (2) such action was obviously of some inconvenience and trouble, although slight, to appellee, and the said action was directly pursuant to and in accordance with the agreement of the parties.

The case of *Shaw v. Philbrick*, 129 Me. 259, 151 Atl. 423, stated:

"In the judicial reports, running parallel with decisions wherein consideration is based on benefit to the promisor, are decisions that when on the part of the promisee, who was under no duty to do so, there has been an act, or omission to act, at the request of the promisor and upon the strength of his promise, which act or omission occasioned the promisee disadvantage, trouble, or prejudice, though slight and not actually harmful, there is legal value. In a legal sense, there

is detriment, and detriment constitutes a valuable consideration."

To similar effect was the holding in *Violett v. Patton*, 5 Cranch 142, 3 L. ed. 61, in which the Supreme Court said:

"To constitute a consideration it is not absolutely necessary that a benefit should accrue to the person making the promise. It is sufficient that something valuable flows from the person to whom it is made; and that the promise is the inducement to the transaction. * * *"

3. If then a valid and subsisting contract came into being, is it susceptible of specific performance? The Statute of Frauds pertaining to contracts for the sale of lands requires it to be in writing and to be signed by *the person* to be charged therewith. The person herein sought to be charged therewith is appellant and it was duly signed by her after careful and due deliberation.

The contract did not require the signature of appellee to meet the requirements of the Statute, for the Statute only requires the signature of the person sought to be charged therewith. That the other party did not sign does not destroy the mutuality of the contract. *Pomeroy-Equity Jurisprudence 2 ed.* Section 2192, provides:

"Where a contract for the sale of lands is signed only by the defendant, it is clear that the plaintiff need never have performed his agreement. There was clear lack of mutuality in the terms. Yet it was clearly held that the contract could be enforced against the party who had signed. The modern cases all agree upon the point. The filing of the bill made the remedy mutual."

The foregoing proposition appears almost daily in the business world through the granting of options. Almost without exception an option is signed only by the grantor thereof and does not ripen into a binding contract between the parties until such time as the grantee thereof accepts the same, pursuant to its terms. Probably the best char-

acterization of appellant's offer herein would be that the same was originally an option which subsequently became a contract through acceptance by appellee.

The same proposition is provided in the *Restatement of the Law of Contracts*, Section 211, as follows:

"When a memorandum of an oral contract within the Statute is signed by only one party to the contract and the Statute (Statute of Frauds) is not otherwise satisfied, the contract is enforceable against the party who has signed the memorandum but not against the other party."

4. If appellee is correct in its foregoing conclusion to the effect that appellant had made an offer which it had accepted and which was enforceable against appellant even though the memorandum thereof was not signed by appellee there would seem to remain for further consideration only the questions as to whether or not the memorandum was capable of severance in order to be enforceable against this appellant, although unenforceable against her brother for a legal reason not concerned herein, and whether or not the said memorandum constituted a sufficient compliance with the Statute of Frauds to permit specific performance.

As to the first proposition the agreement itself indicated that the parties thereto separately owned the separate parcels concerned. The agreement further provided that they "individually and jointly agreed to accept." It would therefore appear that this is a perfect example of the type of agreement contemplated by Title 16, Section 901, of the District of Columbia Code which provides:

"Every contract and obligation entered into by two or more persons, whether partners or merely joint contractors, whether under seal or not, and whether written or verbal, and whether expressed to be joint and several or not, shall for the purposes of suit thereupon be deemed joint and several."

The foregoing is so clear that further effort of explanation would be needless; however, it would still seem in-

cumbent on appellee to provide a satisfactory further legal basis to the Court to determine from competent evidence a means to enforce that portion of the entire contract against appellant requiring her conveyance of Lot 814, Square 321, improved by premises 506 Eleventh Street, Northwest, for One Hundred Thousand Dollars (\$100,000) in the absence of total enforcement of the entire agreement.

5. The basis sought is provided through Plaintiff's Exhibit E. (Joint Appendix 86-89) The testimony of all parties indicated that they had discussed between themselves the "break-down" or allocation to be made of the total purchase price to be paid and that appellant was to receive One Hundred Thousand Dollars (\$100,000) for her property. This was then reduced to writing in the contract prepared by appellee which appears herein as its Exhibit E as aforesaid and was received in evidence upon the trial below without objection on the part of appellant. (Joint Appendix 21)

As this division was the one contemplated by the parties and was susceptible of determination from competent documentary evidence, the Court rightly ordered a conveyance thereof in the absence of any inequitable consequence otherwise resulting therefrom.

Courts have always recognized their inherent powers to grant specific performance of substantial portions of agreements, even if not of the whole. True, this Court has to date refused to grant specific performance of land sale contracts executed by married men in which their wives refuse to join, but courts elsewhere permit performance of such agreements under conditions imposed by the courts for indemnity and the like. However, as to appellant herein, the judgment for specific performance is not a partial or substantial one, but is an entire one. Appellant had no legal or equitable title in any property concerned in the contract except Lot 814, Square 321, and appellant had no other financial or pecuniary interest in said contract than to receive the One Hundred Thousand Dollars

(\$100,000) agreed upon as compensation to her for that property. The judgment rendered goes no further than that property and that amount.

As has been indicated, Courts are willing to specifically enforce so much as may be capable of enforcement where inequitable results do not follow.

For example, in the case of *Thalis v. Wurdeman*, 73 App. D. C. 322, 121 F. 2d. 70, while specific performance of a lease agreement was denied on other grounds, this Court nevertheless held:

“Appellant did not pray for an execution of a lease of appellee’s one fourth interest alone, but obviously this is as much as he could ask for in the circumstances of this case. Under some conditions a co-tenant who promises to convey more than he owns, or who promises as agent for other co-tenants when he is actually without authority to do so, may be compelled to convey what interest he has, * * *”

In the case of *Cochran v. Blount*, 161 U. S. 350, 40 L. ed. 729, the United States Supreme Court affirmed just such a proposition, holding that one party to a contract could be required to convey that which he actually owned. (See also *No-Leak-O Co. v. Chandlee*, 53 App. D. C. 128, 289 F. 526)

Finally do the letters and writings between the several parties meet the requirements of the Statute of Frauds sufficiently to warrant specific performance? Our Code provides, Title 12, Section 302:

“No action shall be brought whereby to charge * * * any person * * * upon any contract or sale of lands * * * unless the agreement * * * or some memorandum or note thereof, shall be in writing, * * * and signed by the party to be charged therewith or some other person by him lawfully authorized.”

The foregoing has been interpreted and re-expressed at Section 207, *Restatement of the Law of Contracts*, to require a writing signed by the party sought to be charged

therewith to contain a sufficient designation of seller and purchaser, the property to be bought or sold, and the material terms thereof.

This Court has itself on innumerable occasions similarly interpreted the Statute. Probably one of the most recent occasions was in the case of *Ochs v. Weil*, 79 App. D. C. 84, 142 F. 2d, 758. In that case the Court had this to say:

“Unquestionably, an agreement of sale under the Statute is valid and enforceable only when it is writing and there is a sufficient description of the thing sold, the price to be paid, and the names of the party selling and the party buying. None of these elements can be supplied by parol testimony. On the other hand, the nearly universal rule is that a complete contract binding under the Statute of Frauds may be gathered from letters, writings, and telegrams between the parties relating to the subject matter of the contract when so connected with each other that they may be fairly said to constitute one paper relating to the contract. * * * ”

The foregoing is a reiteration of the holding of this Court in the case of *Shell Eastern Petroleum Products, Inc. v. White*, 62 App. D. C. 332, 68 F. 2d, 379, in which this Court firmly held that in viewing contracts, memoranda and agreements pertaining to the sale of land that it was proper to view the entire transaction and that any of the requisites needed for validity of the agreement could be obtained from “other writings forming part and parcel of the transaction.” It was also therein held that the fact that such memoranda and writings were to be supplemented by a formal agreement between the parties did not preclude specific performance of the agreement where the Court could ascertain each of the required essentials.

So, in applying the foregoing to the case at bar, we can not escape from the following. Appellant made a definite offer in writing and signed it. The parties were named, the property described, and the overall price set forth. Appellee accepted directly in accordance with the offer. A writing confirming this appears in the form of appellee’s

minute entry of its Board of Directors' action. This was followed immediately by the preparation by appellee of further writings in the form of formal sales contracts providing the final element; namely, the allocation inter parties of the purchase price to be paid.

Accordingly, appellee herein respectfully submits that each and every requirement for an enforceable contract within the Statute of Frauds was met herein by some writing directly connected with the transaction and that the action of the Court below in ordering appellant to specifically perform her contract should be affirmed.

Respectfully submitted,

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